FREEDOM OF THE SEAS

The Pro and Con Monthly

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Sea Control in Ancient History
The U. S. and Freedom of the Seas
The Borah Resolution
The British White Paper

Articles by

Hon. Henry L. Stimson, Secretary of State
Hon. William E. Borah, Senator from Idaho
Professor Pitman B. Potter, University of Wisconsin
Professor Harold S. Quigley, University of Minnesota
W. Arnold-Forster, of London

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The Congressional Digest

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LEGISLATIVE DEPARTMENT

THE PRO AND CON FEATURE ACTION BY HOUSE AND SENATE LEGISLATIVE NEWS ITEMS

Freedom of the Seas

History of Sea Control
The Problem of Contraband
The Laws of Blockade
The Borah Resolution

Foreword

MODERN discussion of the question of the rights of neutrals to carry on uninterrupted sea borne commerce during war time began immediately after the end of the World War while the Paris Peace Conference was meeting.

President Woodrow Wilson included the question in his famous Fourteen Points which were suggested by him as covering questions that should be settled under the terms of the pending treaty. It was at this time that the phrase "Freedom of the Seas" first became prominent, as indicating the rights of neutrals as applied to their sea borne commerce.

The Problem of Blockade

Before the entry of the United States into the World War the action of the belligerents toward American commerce was the subject of considerable controversy. The general question of neutral rights was left unsettled by the Versailles Treaty nor has there been any settlement of its since.

Boiled down to its essential elements the controversy is one involving a direct clash between the question of how far a belligerent nation may go in protecting itself against its enemies and the question of what demand a neutral nation may make of belligerent nations to let its commerce alone.

The Rights of Belligerents

The object of the belligerent nation is to prevent its enemies from receiving aid from neutral countries in the form of different kinds of supplies. Hence, if its navy is strong enough, it sets up a blockade to prevent supplies from being delivered by neutral ships to its enemies' ports. Sometimes it goes even further and attempts to stop cargoes shipped from one neutral port to another on the ground that the ultimate destination of the cargo is really somewhere in the enemy country.

International Agreements

Through the experience of the years many international agreements regarding the rights of neutrals in war time have been reached, but they have not always been adhered to when war came.

When the World War broke out the two agreements generally accepted as covering the question were the Hague Conferences of 1899 and 1907 and the London Declaration of 1909. The London Declaration contained a specific list of articles which should be considered as contraband, that is, articles which neutrals would not be allowed to ship into belligerent territory during war time.

The British Contraband List

Shortly after the outbreak of the World War, however, Great Britain revised the list of contraband goods by increasing the number of articles. This, together with various other acts by belligerents resulted, in the opinion of many authorities on international law, in a virtual break down of the rules of maritime law in warfare.

It was this opinion which led Senator William E. Borah, Idaho, R., to introduce in the Senate, on February 21, 1928, calling for a restatement and recodification of these rules.

Senator Borah on Freedom of the Seas

On January 24, 1929, Senator William E. Borah, Idaho, R., offered an amendment to the Naval Cruiser Bill, then pending in the Senate, calling for an international conference to revise existing sea laws. He withdrew the amendment and later, on February 21, reintroduced it in resolution form. The resolution was referred to the Committee on Foreign Relations where it is still pending.

By Hon. William E. Borah,

U. S. Senator, Idaho, R., Chairman, Senate Committee on Foreign Affairs.

WHEN the great World War closed there was no such thing as a rule or a principle of law to guide and control the use and operation of commerce on the seas. That is the condition of affairs today. If a ship engaged in commerce puts out from one of our ports it has no assurance, if war breaks out anywhere, that the ship will not be intercepted or that it will not be dealt with under the rules of dominancy of the sea, and regardless of what the rights of a neutral ought to be. The legitimate foreign commerce of all nations has no protection other than that of force.

This is the one thing which enables those who are interested in building great navies to argue with success the necessity of a great navy. If there is no rule to govern the use of the seas save the rule of force, necessarily those who are engaged in commerce will look to their governments for protection based upon force, and the governments will necessarily supply it. Theories and plans for peace will give way before the demand of vast interests for protection, and the question is, Can that protection be given by law or must it depend alone upon navies? I want to try the protection of law.

But I think, in the first place, before we do that, and before we start on a naval race, we ought to make every effort possible, first, to bring about a complete understanding with the naval powers with reference to naval building; and, secondly, a complete understanding with reference to the freedom of the seas. If it is impossible to have an understanding with reference to the freedom of the seas, if it is impossible to have an understanding with reference to the size of navies, then, if it is for the protection of our commerce, we will undoubtedly build what we think is necessary to protect our commerce, and all the arguments in the world will not militate against the prime necessity of the United States protecting her commerce. We may protect it without building a navy, and I hope we can, but if we can not, we will undoubtedly build a navy. Let us try in every honorable way to avoid that program.

What therefore is the condition, the real situation at the present time, 10 years after the war? It is this: The highway of nations, the common inheritance of all people, knows no law save the law of force. The "great common," as Captain Mahan called the sea, this indispensable thoroughfare of the nations, is governed through lawlessness and might. When the exigency arises, when the interest is sufficiently strong, no nation may use it with safety unless it has power to compel respect from those who would dominate it. The situation is precisely the same as when Coke declared, in speaking for the King of Great Britain:

"Commanding the seas, he may cause his neighbors and all countries to stand upon their guard whensoever he thinks fit."

Legitimate commerce, the peaceful pursuit of trade, must have an end when the exigency of war suggest it. They may be driven from the ocean overnight. The legitimate fruits of industry, the reward of labor, may be outlawed upon the whim of the selfish edict of a single power. The ship which puts to sea today, bound upon a legitimate errand to a distant port, may, upon the coming on of or threat of war, be captured and find itself at the mercy of a stronger power. Could a situation be devised more calculated to plunge us again into a naval race, more fruitful of battleships, of cruisers and of submarines, more likely to bring at last war? When nations understand that all rules have been abrogated, all law rejected, must not they all necessarily arm if they expect to trade? Will they not in the face of all this be prepared to defend by force that which they can receive no protection under the law? Would they regard that as protection which is less equal in strength than the greatest navy that floats the sea? In the light of these conditions, is there the slightest chance for the reduction of armaments? Is there not something to be achieved ahead of any further disarmament?—*Extracts, see 1, p. 32.*

Text of the Borah Resolution

WHEREAS, the rules of maritime law in time of war as codified at the second Hague Conference and in the declaration of London were in important respects departed from during the late war; and

Whereas it is important as a condition of the limitation of armaments and of the orderly conduct of international relations that the rules of law as developed in the course of centuries be not left in doubt or uncertainty; and

Whereas the present chaotic state of maritime law—leaving the seas subject to no definite rules save that of force and commerce to no ultimate protection save that of battle fleets—constitutes an incentive for great naval armaments; therefore be it

Resolved, That the Senate of the United States believes

First—That there should be a restatement and recodification of the rules of the law governing the conduct of belligerents and neutrals in war at sea.

Second—That the leading maritime powers of the world owe it to the cause of the limitation of armaments and of peace to bring about such restatement and recodification of maritime law.

Third—That such restatement and recodification should be brought about if practically possible prior to the meeting of the Conference on Limitation of Armaments in 1931.

Freedom of the Seas in Ancient History

Struggle for Control in Early Civilizations

by PITMAN B. POTTER

Associate Professor of Political Science, University of Wisconsin

DURING the ten centuries which were brought to a close by the collapse of Rome a certain amount of attention was from time to time devoted to the problem of maritime freedom as a recognized subject of interest and action. In addition, many things were said or done of significance to any student of the subject, although at the time these things were not always consciously said or done with the freedom of the seas in mind. Selden, writing in 1635, did not fail to gather together and record all such actions and utterances, including many which could only by a great effort be made to carry any meaning in this connection. Grotius was not far behind in this activity, although the supply of materials available to him, is in the nature of the case, more limited, as will more fully appear later.

Levantine Dominion of the Seas

The early peoples of the Levant, or some of them, apparently recognized the possibility of a dominion of the seas and gave that possibility some attention. In general they were inclined to assume that it was quite possbile to create and maintain a dominion over the sea comparable to that on land. In spite of the somewhat poetic tone of many of the records it is possible to perceive with a fair degree of clarity the attitude taken on this subject by the peoples of the Levant and the Middle East prior to, or apart from, the states of classic Greece and Rome.

Thus Antiochus IV, Epiphanes, King of Syria in 176 B. C., is quoted by an ancient writer as asking, in regard to the Syrian Sea, "are not both the sea and the land mine?" The people of Tyre were said to have "brought the sea under their dominion for a long time, not only the neighboring sea, but wherever their fleets went," so that the expression "a Tyrian sea" came to mean a body of water under control. Xerxes is said to have declaimed at one time as he scourged the Hellespont in a fit of temper: "thy lord inflicts on thee this punishment."

The Early Greek Laws

More precise than these rather general and poetic statements are other descriptions of the activities and policies of primitive Greek rulers. Thus it is recorded that "there was an ancient ordinance concerning the Erythrean Sea laid down by King Erythras, when he was master of that sea, that forbade the Egyptians to enter it in a ship of war, and restricted them to one merchantman." Herodotus tells us that "Polycrates (of Samos) entertained a design which no other Greek so far as we know ever formed before him—unless it were Minos the Cnossian and those (if there were any) who had the mastery of the Ægean at an earlier time—Polycrates . . . was the first of mere human birth who conceived the design of gaining the empire of the sea."

Minos and Sea Control

The case of Minos is the most famous of all in this period. Thucydides says that Minos is the first to whom tradition ascribes a navy. "He made himself master of a great part of what is now termed the Hellenic Sea." Diodorous Siculus writes that "he (Minos) was the first of the Greeks that rigged out a brave navy and gained the dominion of the sea." Seneca has one of his characters salute Crete as "mistress of the vast sea." And Aristotle explained how, by means largely of its geographical location, Crete, under Minos, "acquired the empire of the sea and the isles." This maritime dominion of Minos has been dated back by some students of the problem as far as the fifteeenth century before Christ.

Eusebius, who took very extensive note of this whole question, does not, for some unknown reason, mention Minos. But he makes a list of seventeen other nations which had held the dominion of the sea in ancient times. Eusebius includes in his roster the Lydians,—who, a later writer avers, succeeded Minos in the tenure of maritime dominion,—the Pelasgians, the Thracians, Rhodians, Cyprians, Phœnicians, Egyptians, Milesians, Lesbians, and others. Eusebius himself is believed to be repeating the record of a lost historian before him. Many of his items are confirmed by Strabo, by Herodotus, and other extant historians. The information given by Eusebius is, of course, so meager that not much can be deduced from it, and not only are the Samians and Polycrates omitted from the list, but also no mention is made of any individuals whatever. But it amply attests the scientific recognition of the question of maritime dominion and indicates a tendency to admit the existence of such dominion.

Accuracy of Early Historians

It remains to decide upon the degree of importance, the significance, to be attached to these statements of the historians.

The most obvious suggestion,—assuming, of course, as we must assume, in the absence of means and opportunity to criticize the records as here given, that the facts are accurately related,—the most obvious suggestion is that these writers were imposing upon events and practices of an earlier time a concept arising in their own

thought and in their own age but not, perhaps, existing in the period of which they were speaking. In other words, did the rulers and peoples of the states of the Near East, the Levant, and primitive Greece, consciously conceive of their actions in terms of maritime dominion, or did they merely obtain and exercise what we should call maritime dominion, without themselves recognizing it as such? Beyond this comes the question whether such attempts to secure and maintain dominion were regarded by other peoples as proper, legitimate, legal, or not.

"Proprietorship of the Seas"

Muller-Jochmus, from his observations, concludes that there was, in the minds of the ancients, a legal idea (Rechtsansicht) of sea dominion. He asserts that practice was fairly uniform in different places and periods, that proprietorship (Eigenthumserwerbung) was regarded almost universally as possible, and that thence the idea of exclusive sovereignty (Herrschaft) over the sea, expressed in the Greek verb "to rule," was developed, and that such power was recognized as a legal power (eine rechtliche). The list of Eusebius is taken as evidence of the recognition of a definite legal category (Rechtsansicht) and it is declared that the legal character (Rechtsmassigkeit) of Minos' dominion appears to be conceded by Greek writers.

These apparently clear-cut views are subject to some qualifications, however. Muller-Jochmus recognizes that in most cases the control exercised by a given ruler over a given body of water was mainly a de facto physical control (eine faktische), observed to exist in fact by other peoples and rulers, perhaps, but not recognized, as we should say, as a matter of legal right. Often the commander of the sea was really only a commander at sea,—an admiral, that is, in his country's navy. Or, the national dominion was, perhaps, only one of influence, prestige, or power. Minos' dominion of the sea is described in one place as merely factual (thatsachlichen).

Maritime Dominion Not Accepted

The attempt to establish a legal character for the maritime dominion obtained and exercised by these early Levantine peoples seems doomed to failure. The whole of the evidence is to be found in state practice, as above recorded. There is no evidence of a recognition of a legal concept of maritime dominion. Because there is no evidence of the recognition of a law of nations. Rulers knew that dominance at sea was desirable and possible; those who could obtain it did so. But the question as a question of law and right, had not yet emerged, because the concept of interstate law itself had not emerged.

This conclusion is confirmed when we notice the grounds on which dominion over the sea is based by contemporary students of the question. Aristotle mentions the geographical situation of Crete as the basis of her dominion at sea, and he does not mention that factor as entitling her to dominion as of right, but as enabling her to secure that dominion as a matter of practical success. The part played by his navy in Minos' success is stressed by several writers; and the fact that Minos cleared the Ægean of pirates is given as evidence or definition of his position in that sea, whereas at other and later times the clearing of a sea of pirates is often described as the establishment of the freedom of the sea. Evidently, the decisive fact was not what was done with regard to the use of the sea by a ruler in position to say what should or should not be done there, but the fact that he was in that position. It was not the exercise of recognized authority which was important so much as ability to exercise control in fact.

Athens and Sparta.

When we come to classic Greece, however, matters change somewhat, for we there encounter the great contest for ascendancy between Athens and Sparta, a contest which, in the very nature of the case, took place on sea as well as on land, and inevitably raised the question of political and legal rights and power at sea. First one state and then the other secured an hegemony which was applied to maritime as well as continental affairs, and which they claimed as legitimately due them, in view of all the circumstances.

The purposes of the contending parties in the Greek wars of ascendancy and the part played in their policies by the sea are reflected in numerous utterances of Greek historians and statesmen. Demosthenes described to the Athenians—in the course of an argument on a collateral question—how certain generals had delivered Byzantium to their admiral, Thrasylabus, and thus made them "masters of the Hellespont" so that they were able with propriety to farm out the tolls on that strait and gain ample funds thereby. Referring more generally to the Ægean at large, it is recorded by another historian that at one juncture the Spartans "desisted from long contention and yielded a pre-eminence of sea dominion to the Athenians."

Themistocles and Pericles

Themistocles and Pericles were the leaders in this policy and this demand on the part of Athens. Thucydides records that the former "first dared to say that they must make the sea their dominion." Pericles at one time, in supporting his maritime program, reviewed at length the disadvantages under which Sparta was laboring, and concluded: "such I conceive to be the chances of success of the Lacedemonians, . . . such is the power which the empire of the sea gives (us)."

Attaining a predominance upon the sea, the Athenians exercised their control with little restraint. They excluded the Megareans at one time from all ports over which they had control. In the peace made with Sparta in 423 B. C., they imposed upon the latter the regulation that neither Sparta nor any of her allies should sail along the coasts of Greece in war vessels or in any ships of over five hundred talents burden. Henceforth, they could fairly exercise the right of exclusion under the treaty agreement. And as against Asiatic states the same policy was pursued. In 478 B. C., "before the Athenians had obtained their empire of the sea", as Plutarch puts it, the admiral Cimon was sent to drive the Persians onward in their flight from Greece, and in defense of the fatherland he succeeded in defeating the enemy in a naval battle at the mouth of Eurymedon. He then and there stipulated that in the future the Persian "was not to sail west of the Cyanean and Chelidonian islands with any armored ship of war."

Sea Control by the Spartans

The Spartans themselves were able at times to secure control "without difficulty," says Isocrates, whenever the Athenians slackened their efforts. He attributed this to

the magnificent energy and discipline of Sparta, and describes the result at one juncture by saying that the Spartans "(now) gained command of the sea." This called forth renewed efforts on the part of Athens, and when the latter had regained her position she watched with greater care, for she "feared the Spartans might reestablish their power at sea." All of these turns of fortune were duly embodied in interstate treaties or international conventional law.

Again it becomes necessary to scrutinize the record in order to decide upon its exact meaning.

To Selden, of course, this record meant that the Greeks of the classic period practiced and recognized maritime dominion, and he, therefore, dwells on this particular body of data at great length. More scientific students of the subject in modern times are inclined to support his conclusions. Phillipson declares that, in this period, "property in the sea (on the part of a state) was considered possible not merely in territorial (inshore) waters, but in regions extending far beyond these limits." He adds that "most of the leading states of antiquity claimed such sovereignty at one time or another," and that "Athens openly avowed a sovereignty of the sea" and was compelled at one time or another to fight both Sparta and Macedon for her title. Muller-Jochmus, devoting more attention to this particular point, is equally convinced, and avers that, when a search is made for the way in which these ancients viewed the sea, "we hit upon the idea of the dominion of the sea at once."

The Influence of Classic Greece

It does, indeed, at first glance appear that by the time of classic Greece there had developed such a body of thought regarding interstate relations as to permit us to say that the Greek city—states recognized maritime dominion as an established institution. It was this concept, as developed in this period, that, in part, influenced Plutarch, Herodotus, Thucydides, and others, to attribute maritime dominion proper to earlier rulers in Tyre, Crete, and elsewhere.

On the other hand, two things are clear by way of qualifications to this conclusion. The Greeks were concerned almost entirely with rather limited bodies of water along the coasts of the Greek peninsula, in the bays and harbors, and among the islands of the Ægean sea. This facilitated the establishment of maritime dominion and the conclusion, in theory, that it could be established. And, in the second place, the Greeks did not go very far in defining maritime dominion. They did not say whether it extended out over the open sea of the Mediterranean. They did not,—and here we encounter the greatest weakness of the Greek treatment of the problem,—explain definitely whether they meant a proprietorship *de jure* or a mere domination *de facto*.

Phillipson begins by asserting that "the maritime ascendancy of this or that conquering nation was not regarded merely from a comparative point of view, as to the predominance of interest (and power?), but was exercised rather in the sense of absolute proprietorship." He admits in the next breath, however, that the terms "rule of the sea," "lord and master of the sea," "have command of the sea," are used with varying meanings. They occur frequently enough, but "they are seldom used in a sense of complete ownership. For the most part they designate temporary supremacy or predominating influence."

Legal Control Not Admitted

In other words, while the Greeks of the classic period had gone further than the people before them and around them in recognizing maritime dominion, it is still impossible to say conclusively that they had recognized it as a legal right. The utterance attributed to the Megareans, and the treaties which are so often cited as having contained provisions for maritime control, while they clearly look toward the development of a body of international maritime law, do not suffice to justify the conclusion that *de jure* dominion of the sea was admitted at this time. There is a significant lack of evidence in the treaties concluded among the Greek city-states of any formal recognition of sea-dominion. Every sign—the nature of the state—system and the character of contemporary interstate practice—pointed to the imminent emergence of something of the kind, but as yet the possibilities of the situation remained latent and undeveloped.

Again in this case the grounds upon which the claims to sea control were rested confirm this inference. As Minos had gained dominion by clearing the sea of pirates in his day, so Cimon gained a dominant position by having intervened in Scyros and driven out the Dolopian pirates. The problem of the pirate was ever present, and any commander who could clear the sea of these robbers would be sure to gain by that performance a regard in the eyes of the shipping population of the surrounding regions which would make him, in truth, lord of the sea. And again this action received an ambiguous interpretation. Plutarch, describing Cimon's action, says he "made the Ægean a free sea." Yet Phillipson points out that this very action led to arrangements by Athens "for policing the seas," action which would merely substitute Athenian authority for piratical domination. The Greeks had not, in short, decided definitely what was maritime freedom and what was the opposite.

The Contest for Naval Supremacy

In point of fact, what was chiefly at stake was naval supremacy. When Isocrates said that the Spartans "gained the supremacy by sea and land" he tells the whole story and tells it accurately. The struggle between Athens and Sparta—maritime democracy against continental oligarchy—was primarily a struggle for physical ascendancy at sea and on land. The control exercised by Athens over Persia and Sparta in their maritime activities was the control rather of the mailed fist than that of the legal right. Thucydides tells how, at another time, "the Ionians fought with Cyrus and were for a time masters around their coasts"; mastery, not proprietorship, was at stake.

Other non-legal aspects of the situation are to be noted. Isocrates refers to the fact that Athens owns "more than two hundred ships" as one important aspect of her maritime power. The action of her navy in collecting contributions and seizing the strategic points of Byzantium and Chrysopolis, across the Bosphorus, where the Pontic trade could be held up, are described by Xenophon without any suggestion that her action possessed or created legal or constitutional authority. Polybius dwells on the political value of the city: Byzantium so lies upon the Hellespont that no ship can enter or leave without its consent. And, as the Exuine holds so many things in demand by men, so the citizens of Byzantium are lords

thereof, and the Greek states must necessarily keep peace with them or even secure them as allies.

The Results of Sea Control

However ambiguous in its foundations may have been the action of Athens in clearing the sea of pirates and policing the sea against their reappearance, her exercise of power at sea over other Greek states was not misunderstood as to its consequences. Her maritime domination was viewed as a tyranny incompatible with the liberty of Greece and the equality of the Greek states. The control exercised over their trading ships, the confiscation of their war marine—these actions were regarded as parts of a system "which did not differ from tyranny either in its actions or the evils it entailed." Isocrates, anticipating by two thousand years a certain nineteenth century critic of sea power, declared that, as soon as they obtained maritime power, Athens and Sparta in turn began to degenerate in their national ideals. Command of the sea bred haughtiness, pride, and corruption.

Another face might be put on the Athenian policy by one sympathetic with the idea of sea power. As Phillipson has put it: "the Athenians did not exercise tyrannical power over the sea, . . . (they) were in favor of the freedom of the seas. They made every effort to prevent a noxious Spartan predominance at sea and to ensure the safety of peaceful commercial enterprise. The prohibition laid upon the Spartans to prevent them from navigating in Greek waters with war vessels is noted in support of this conclusion. We have here, apparently, a case of one power securing naval domination and making the protection of the world's maritime liberty—and opposition to any potential rival—its own peculiar task. Athens ruled the waves in the interest of the freedom of the seas. Such an interpretation of sea-power is not unfamiliar to students of modern international relations.

Athens a "Maritime Policeman"

Of course, much of this view is merely an attempt at justifying national policy by imputing to it general social purposes or results. In one case, however, the Greek states appreciated the Athenian power at sea. Lycurgus relates how, after the battle of Eurymedon, the barbarians were excluded from Greek waters "for the protection of the liberty of Greece." Like the freedom from piracy, Athenian command of the sea produced a certain degree of freedom for the Greeks from Persian naval expeditions. Athens became the maritime policeman for all of Greece, and that in large part by the acquiescence of the other Greek states.

At the end the Athenians seemed to plan just such a funding of their power and interests at sea with the powers and rights of other Greek states as has been contemplated by the modern mistress of the seas under similar circumstances. Pericles is recorded to have "introduced a bill to the effect that all Hellenes . . . resident in Europe and Asia . . . should be invited to send deputies to a conference at Athens . . . to deliberate . . . concerning the sea, that all might sail it fearlessly and keep the peace." The freedom of the sea was a matter of general interest, and Athens was, as the dominant naval power, the natural leader in what was to be evidently a reorganization of maritime authority of great scope. Because of opposition from Sparta, however, nothing ever came of it.

This is the conclusion of Greek practice and Greek thought regarding the sea. It dwelt predominantly upon maritime dominion, not maritime liberty, and conceived the latter only as a product of the former. It did not lay down any formal rules of legal right respecting sea dominion, but regarded the latter as, in the main, a matter of military and commercial power.

Rome and Sea Control

When we reach the age of Rome we find a still more conscious and articulate recognition of the problem of maritime freedom and dominion than in the period of classic Greece. The treatment accorded the question by Rome may be divided into two parts. There is, first, the theory and doctrine of the Roman law, as worked out by her great jurists and finally embodied in the *Corpus Juris Civilis of* Justinian. And, in the second place, there is a body of state practice not unlike that observed among the states of the eastern Mediterranean. To these we now turn in the order named.

At the beginning of the treatment of the law of things in the Institutes of Justinian we find this principle stated:

"By the natural law some things are common to all, some public, some the property of a group, some of no one, but most things are the property of individuals." Then follows the striking statement: "By the law of nature, then, the following things are common to all men: the air, flowing water, the sea, and consequently the shores of the sea." The sea is said to be subject only to what is called the *jus gentium* and open thereby to free or public use. The ownership of the sea belongs to no one, nor does the sand beneath it. Rivers and ports likewise are public, fishing therein is common to all, and the fish of the sea become the property of the finder. Piling driven into the sea are his who places them there, provided that he does not interfere with the common use of the sea. All this being true, title to the sea could not be acquired in any way, including in this prohibition prescriptive title by long possession. Even the shores of the sea were open to common use, including the banks of the rivers; on this point the DIGEST and the Institutes are as one.

The Stoic Philosophy

The idea of the common, public, or free character of the sea as here described was the product of Stoic philosophy. In that philosophy the ideal of maritime freedom had its poetic expression comparable with that given to the ideal of maritime dominion in Greek times. Cicero described the principle of common use of the sea in these glowing words: "this, then, is the most comprehensive bond which unites together men as men and all as all; and under it the common right to all things that nature has produced for the common use of man is to be maintained, with the understanding that, while everything assigned as private property by the statutes and by civil law shall be so held as provided by those laws, everything else shall be regarded in the light indicated by the Greek proverb: 'Amongst friends all things in common.'"

The Roman philosophers and jurists thus raised what was at the time the first, and still remains in some ways the most powerful, challenge to the concept of maritime dominion put forward in human thought. The oft-quoted dictum of the Emperor Antoninus: "I am indeed lord of the world, but the law is lord of the sea," may

be taken as a fine Roman statement of the principle of maritime freedom.

Carthagenian Dominion

When we turn to state practice in the Roman period, on the other hand, we find phenomena almost identical with those observed among the Greek states. Carthage, with Italian states preceding Rome, and Rome herself, all attempted to secure, and definitely claimed, maritime dominion as clearly as, if not more clearly than, had Athens and Crete in their day.

Polybius relates that "The Carthaginians enjoyed a command of the sea without any controversy, as received from their ancestors." Elsewhere he refers to the same people as "enjoying a dominion of the sea without dispute." At one time Carthage apparently declared a penalty of death for unlicensed trading from Spain, Gaul and Italy to Sardinia, Corsica, Sicily and the Pillars of Hercules. This proud people exercised a powerful and reluctantly acknowledged authority in the western Mediterranean which lasted as long as Carthage herself.

On the Italian peninsula were many tribal states at the same time asserting similar claims. Strabo presents an account of how the people of Spineta—a city-state at the mouth of the Po—at one time "held a dominion over the sea." In one passage Diodorus Siculus describes the colonizing plans of the Etruscans "when they were masters at sea." Many other writers testify to the position held by these people. Livy wrote that "the strength of the Tuscans extended far and wide, on land and sea, before the Romans." Diodorus, again, recounts that the Tyrrhenians "were formerly very valiant, and . . . having a great navy, were long masters of the sea." And Strube relates that Selene, one of their cities, was, in fact, "an arsenal worthy of a people holding dominion for so long a time over so vast a sea."

Carthage Surrenders to Rome

Rome herself succeeded to the maritime power of these early people as Athens had succeeded to the power of Crete and Samians in the East. Livy recounts a surrender of Hannibal to Scipio at which time the former expressed a hope that, if it pleased the gods, the Carthaginians, now yielding to Rome, might see their successors in turn ruling their dominions by land and sea. True to the prediction, the Romans soon imposed restrictions upon the Carthaginians themselves in their use of the western Mediterranean, as Athens had once restricted Sparta in her maritime activities. By one of the settlements imposed by Rome upon Carthage in the course of their long struggle, the latter was compelled to surrender her whole navy and its equipment and supplies and to agree not to navigate northward toward Rome beyond a certain promontory.

Later the Romans began to call the Mediterranean "our sea." Florus, writing at the beginning of the second Christian century, referred to the Strait of Gibraltar as the place "where the threshold of our sea appears." Sallust related how the veterans of the army of Hercules,—Medes, Persians, and Armenians,—when the army was broken up in that locality, were carried to Africa and "occupied regions adjacent to our sea." Mela declared that "the whole of it (the Mediterranean), wherever it is found, is called by one term *nostrum mare.*"

Pompey's War Against Pirates

The most impressive episode in the Roman attitude toward the Mediterranean is to be found, probably, in Pompey's war against the pirates in 67 B. C. Cicero summarized the story in the course of his support of the Manilian law, which was designed to confer extraordinary jurisdiction upon Pompey for the war against Mithrdates. Cicero also remarked to his friend Atticus that Pompey's policy was clearly an imitation of that of Themistocles, for he apparently "believe that he who ruled the sea ruled the world." Pliny also related that Pompey "freed the coasts from the pirates, and restored the sovereignty (imperium) of the sea to the Roman people"; and Dio Cassius related that Pompey was, above all, "master of the entire sea," even when certain of his other advantages and resources had failed him.

Plutarch's Account

The most complete account of Pompey's activities is to be found in Plutarch. It deserves to be noted at length: "This power (of the pirates) extended . . . over the whole of our sea, making it . . . closed to all commerce. This . . . inclined the Romans . . . to send out Pompey with a commission to take the sea away from the pirates. Gabinius drew up a law which gave him, not merely a command at sea, but an outright authority and irresponsible power over all men at sea. The law gave him dominion over the sea this side of the Pillars of Hercules." There follow some details regarding the passage of the law, and the story concludes with a description of how Pompey divided up the sea and coasts into districts, cleared all of these districts of pirates, and set a commander with a squadron over each.

Dionysius Halicarnassus carried this Roman policy and purpose to its logical conclusion by declaring that "Rome is ruler of the whole sea, not only that within the Pillars of Hercules, but of the whole navigable ocean." The Emperors in the East in the last days of the Empire called themselves lords of the sea both within and without the Hellespont, and lords of the sea and land in general, and only by force could Rhodes and other maritime states compel the Emperors at Byzantium temporarily to refrain from charging tolls at the Straits.

Significance of Roman Sea Control

What, now, shall be said of the value and significance of this evidence of Roman maritime dominion, and how reconcile the doctrine of the jurists with the practice of the Roman state?

In the first place, it is notable that Rome was dealing here not with local or limited bodies of water merely, such as the Ægean sea or the coastal waters of Greece or Italy, but the whole Mediterranean, an inland sea in one sense, but the open sea as the Romans knew it. On the other hand, it is noticeable that the Roman policy and claim was applied to the Mediterranean chiefly as it became a lake surrounded entirely by Roman territory, and now—except by extremists—to the Atlantic Ocean, although the Romans were fully acquainted with the latter.

Even as applied solely to the Mediterranean, however, the state policy of Rome seems to conflict directly with the principles of the Institutes and the DIGEST, and, in view of the importance which has been attached to those principles in the history of the controversy over the freedom of the seas, it will be necessary to examine the matter with some care.

Muller-Jochmust puts matters on a chronological basis: the view expressed in the Roman law was an early view, which gave way to a later view where Rome considered the sea as an integral part of her territorial domain, the primitive natural law being overpowered by the sophisticated positive law. The change came, supposedly, with the change in Rome's position in the world and the growth and exercise of her sea-power.

Roman Law Vs. Roman Practice

There is some basis for the contention that restrictions of maritime liberty came into the law by alterations based on empirical data of the more practical sort. Local custom contrasted with the general principles of the law in many cases, prescriptive rights encroached upon common rights based on general principles, and riparian right multiplied rapidly and increased greatly in importance in the later Empire. But all of these limitations or exceptions were taken into account by Justinian. The Institutes and the DIGEST embody the law at its conclusion, and the principles of freedom of use and common enjoyment are found there in all their force. The attempt to explain the divergence between Roman law and Roman practice on this basis is therefore bound to be unsuccessful.

The explanation is much simpler. The rules in the Institutes and in the DIGEST refer merely to the free use, common use, public use, of the sea by all members of the Roman state. They relate to the rights of individuals toward one another in a single national society. They are not rules of interstate or international law at all. Antoninus spoke not of a law of nations but of Roman public law alone. This appears to be evident on the surface, but, if any further proof were needed, the use of the term "public," which meant common to all Roman citizens, would be conclusive. The limitation upon individual use under the general right of public enjoyment, in the interests of preserving that public enjoyment, is further evidence to the same conclusion. Likewise, the shores, which fell under the principle of public use, were specifically declared to belong "to the Roman people."

Application of the Roman Law

Granting, then, that the law of the Institutes and DIGEST does not itself disprove the existence of Roman maritime dominion as against other states—and perhaps even reenforces it by implying a Roman state dominion in the sea for the enjoyment of all Roman citizens—can the theory of that law be recast or transposed to apply in the international sphere? Apart from the scientific risk attendant upon such a procedure in the abstract, it is to be noted that ordinarily this task has not been frankly attempted by those employing the Roman law in discussing maritime freedom. They have simply put forward the rules of Roman law as though they automatically applied to interstate relations as well as to private relations. Did Rome so interpret the matter? Did Rome, in her theory of interstate relations, apply the ideas of the private law to her relations to other states, and did those states insist on this treatment, or did they yield recognition to Roman dominion? In other words, what, if any, were the holdings of contemporary international law on the point at issue, and how did it deal with Roman state practice as already reviewed?

Rome Controlled Seas by Force

Again in this period, as in the period of Athenian supremacy, the condition of international law presents a bar to the sure conclusion that Rome possessed a maritime dominion recognized by a law of nations. Now more than ever before was a true international law impossible. Rome had swallowed up the independent states of the Mediterranean basin. She claimed a maritime dominion, took control by her naval power, and exercised it freely and fully. But not with the free consent of free states. As a result of her conquests her sea dominion became a matter of imperial constitutional law and practice. As in Greek times, so here, we find practically no recognition of Roman maritime dominion among the many treaties concluded by Rome with other powers. Rome held more physical power over the sea than any state in antiquity; less than in the days of Pericles, however, could it be said that there existed a freely recognized maritime dominion under freely accepted international law.

Destruction of Pirates

It will have been noted, also, that, as in the case of Athens, much of the Roman claim to maritime dominion rested upon her activities against the pirates. In this matter also Rome has less claim to maritime powers *de jure*, at least in the period of the Empire, than had Athens. Piracy was nothing more than interstate war in the early days. Piracy was an official state activity, and its suppression a matter of interstate war. Treaties were made limiting its practice, alliances were made to combat the pirate states. Accordingly, success in that direction might naturally produce maritime dominion between state and state. But by the time of Pompey the independence of the pirate states had been destroyed, and hence piracy was merely rebellion or depredation not clothed even with the character of interstate war. Hence, further, its suppression could not lead to rights of sea dominion among independent states. The pirates were now merely rebellious Roman subjects or enemies of all mankind as embodied in one great state.

Finally, the poetical exaggeration traceable in the descriptions of Roman sea dominion are greater than in the time of Pericles. Rome and Roman power and majesty inspired poetic tributes to a degree not known to Athens.

To read that the Emperor ruled sea and land, that Caesar had made the Brish sea his own, that Augustus was god of the sea, and that Thodosius brought the sea under his scepter, is to appreciate chiefly the imaginative character of these poetic outbursts. Roman maritime dominion was at once more powerful, less legalistic, and more romantic than that of Athens.

In sum, it cannot be said that either Athens or Rome held a maritime dominion recognized by a law among independent states as legally valid, in spite of their naval supremacy, their success in suppressing piracy, and the ideas and feelings of historians and poets regarding their position in general. The freedom of the seas was a great problem of interstate politics and diplomacy in this age, but not one which had yet become a matter of formal and international law.—*Extracts, see 2, p. 32.*

America and the Freedom of the Seas

Attitude of the United States on Perplexing Problem

IS the sea, in the language of international lawyers, "res communis or res nullius"? Is it the common property of all or does it belong to nobody?

Certainly no nation or group of nations claims exclusive jurisdiction over any great extent of open ocean. Nor is there any specific code, generally agreed upon by the world powers, governing the sea.

Nevertheless, it is obvious that vital interests of all sea-going peoples at any time may be profoundly affected by events at sea. They hardly can be expected to stand by supinely and let events take their course, merely on the theoretical grounds that the ocean is beyond their jurisdiction.

Recognized Basic Principles

The policies and attitudes of the United States and most other civilized nations during the past century have been puzzling, at times apparently inconsistent, and obviously molded according to circumstances. The World War threw a spotlight on several of them. But there have been certain generally recognized basic principles that have not passed out of sight entirely, either in peace or war.

The fundamental rule was laid down in 1685 by Cornelius van Blynkershock, judge of the Supreme Court of Appeals of Holland. He said "Imperium terrae finiri ubi finitur armorum potestas" (the control of the land ends where ends the range of its arms). Modified by numerous interpretations, refinements and adaptations to special conditions, van Blynkershock's opinion remains to this day the basis of civilized practice.

Basis of American Policy

A few years later it was interpreted by an Italian jurist to mean the range of a cannon shot from land—a distance set arbitrarily at one sea league or about three miles. The rule was made the basis of American policy by Thomas Jefferson when he was Washington's Secretary of State. In identical notes to the British and French Ministers he wrote: "The greatest distance to which there is any respectable assent among nations has been the extent of human sight, estimated at upwards of 20 miles, and the smallest claimed by any nation whatsoever is the range of a cannon ball, usually stated at one sea league." He indicated his own intention to abide by the lower limit.

The United States never has wandered far from this principle, so far as any claim to control over the seas is concerned. In treaties entered into with Great Britain, Germany, the Netherlands, Cuba and Panama between 1924 and 1926 the contracting nations express "their firm intent to uphold the principle of three marine miles, extending from the coastline outwards and measured from the low-water mark, constituting the proper limits of territorial waters." The United States also claims exclusive jurisdiction over certain land-locked extensions of the sea, such as Chesapeake Bay.

So to this extent, at least, the seas are not lawless. Within three miles of its coast the United States considers the ocean as part of its territory and subject to its Federal laws. Persons born on merchant ships within this limit theoretically are born in the United States, regardless of the nationality of the ship. Marriages and contracts within this limit are entered into under the laws of the United States. Most other countries take the same position. It seldom seriously has been challenged.

Courts Given Jurisdiction

Congress in 1794 gave Federal district courts jurisdiction over complaints by whomsoever instigated in cases of captures made within the waters of the United States or within a marine league of the coasts thereof."

With certain insignificant exceptions—the Scandinavian countries maintain a four-mile limit—this is as far as any nation claims absolute control. Elsewhere the seas are "the common inheritance of all people" so long as the use made of them is not obnoxious or dangerous to some nation powerful enough to assert its authority.

Once outside the three-mile limit we are in the maze of apparently inconsistent precedents.

A Portuguese man-of-war in 1799 captured the American ship Aurora about five leagues off the coast of Brazil for alleged illicit trading with a Portuguese colony. Both ship and cargo were confiscated. A clause in the Aurora's insurance policy stipulated that it would be voided by illicit trading with Brazil. The insurance company refused payment. The ship's owners maintained that the fact of having approached within four or five leagues of the Brazilian coast did not constitute "trading," whatever the ultimate intention may have been.

U. S. Supreme Court Ruling

The case went to the United States Supreme Court and the insurance company was upheld in an opinion rendered by Chief Justice Marshall, as follows: "The right of a belligerent to search a neutral vessel on the high seas for contraband of war is universally admitted because the belligerent has the right to prevent injury being done to itself by assistance intended for the enemy. So, too, a nation has the right to prohibit any commerce with its colonies. Any attempt to violate the laws made to protect this right is an injury to itself, and it has the right to use means necessary for prevention. These means do not appear to be limited in any certain, marked boundaries. If they are such as unnecessarily to vex and harass foreign commerce foreign nations will resist their exercise. If they are such as are reasonable and necessary they will be submitted to."

Three years later, under almost identical circumstances, the French seized the American ship Sarah off Santo Domingo. This case also went to the Supreme Court, and Marshall, who evidently had changed his mind in the meantime, rendered an almost exactly contrary opinion, holding that the right of a nation to capture a smuggler must be exercised within the recognized three-mile limit or not at all. He said: "The power to seize for infraction of law is derived from the sovereign and must be exercised, it would seem, within those limits which circumscribe the sovereign power. The rights of war may be extended on the high seas, but the pacific rights of the sovereign must be exercised within the territory of the sovereign."

Congressional Enactment

Thus one precedent apparently nullifies the other. But on March 2, 1799, Congress enacted that a ship bound to any port or place in the United States might be boarded anywhere wtihin four leagues of the American coast, searched and compelled to show its manifest.

Almost a century later, in 1891, the Supreme Court ruled: "All government for the purpose of self-protection in time of war or for the prevention of frauds on its revenue exercises an authority beyond this limit (three miles)."

Once beyond the three-mile limit, however, the doctrine of the right of search and seizure rests on very tenuous precedents, and there does not seem to be any general agreement among nations. Generally a nation must be guided by the specific circumstances, frankly recognizing in the words of Marshall's decision in the Aurora case, that if it's actions "are such as unnecessarily to vex and harass foreign commerce foreign nations will resist their exercise, and if they are such as are reasonable and necessary they will be submitted to." There is no hard-and-fast rule, such as that of absolute control within the three-mile limit.

In time of war a neutral nation generally abides very strictly by the "cannon shot" principle. In 1916, for example, the United States expressed its regret at the presence of British cruisers off its coast, but it did not deny their right to be there. Actual invasion of the three-mile limit by a fighting fleet, however, would be paramount to an invasion of the country and a violation of neutrality. International law recognizes for merchant ships "the right of innocent passage" through territorial waters. War craft do not have the same right. They generally are allowed free roadway in time of peace, but their passage may be prohibited at any time.

Has Faced Difficult Situations

Absolute control within the three-mile limit and the right of search and seizure for an indefinite distance outside the three-mile limit has involved the United States in some difficult situations, even before the passage of the Volstead act. Previous to the purchase of Alaska by the United States, Russia had tried to assert her sovereignty over all of Bering Sea, with the object of protecting the seals. This right was contested strenuously by Great Britain. Russia admitted that under ordinary circumstances she would be making an extraordinary and untenable claim, but that due to the peculiar breeding habits of the seal, it was necessary to preserve the industry. The matter was compromised by treaties.

The United States inherited this problem with the purchase of the great northern territory and asserted her jurisdiction over the seal-inhabited waters, regardless of their actual distance from the coast line. Russia's sealing treaties had come to an end with the relinquishment of her control over the territory. The United States based her assertion of supreme authority on the same basis—that the sealing industry constituted the very life of the territory and that if the animals were not protected they would soon become extinct.

American Claims Relinquished

This puzzling problem finally was settled by the appointment of an international commission and the relinquishment of the American claims.

The slave trade also produced puzzling problems in respect to the freedom of the seas.

Slaves who could escape to British ships anchored outside the three-mile limit, it was ruled by the Court of King's Bench, by the very act of setting their feet on deck became free men under the protection of the British flag. Furthermore, any slaves on American ships which entered the three-mile limit of Great Britain or any of her colonies were declared automatically freed.

Apparently, however, there was no serious American effort to protest this twist of generally understood international law. It was up to the slave owners to keep their slaves at home.

The United States strenuously maintains its absolute control within the three-mile limit, but ordinarily, as a matter of international courtesy, does not exercise this control over the crews of foreign ships. It is ready to step in, however, whenever there is need.

Outside the three-mile limit war creates an entirely different situation. A belligerent power always has maintained the right of effectual blockade of the enemy coasts, the only rule being that the blockade actually must be effectual. Obviously a nation cannot simply declare some port blockaded and expect other nations to take it seriously. But the right of blockade may determine the very existence of a nation—a condition under which few tenuous theories of international law would stand the test of practice.

Blockade in the Civil War

In the Civil War the North apparently had a serious blockade problem—that of shutting off imports of war material from approximately 3,000 miles of coast. Actually this was not as difficult as it seemed, since an effective blockade of the ports of Norfolk, Wilmington, Charleston, Savannah, Mobile, New Orleans and Galveston was practically all that was needed.

Nevertheless this gave rise to one very important precedent upon which is based the "doctrine of ultimate destination," now apparently a well established principle in wartime. In the Napoleonic wars Great Britain had maintained the doctrine of continuous voyage—that is the right to seize a neutral ship bound indirectly to a French port with war supplies. In the Civil War British ships carried their cargoes intended for the South to Nassau or Havana, where they were unloaded. Then they would be reloaded on Confederate blockade runners. To stop this practice the United States began seizing ships on the way to the Bahamas or Cuba with war supplies.

Entirely New Doctrine

Among the captured vessels was the British ship Springbok—London to Nassau. It was taken to New York, where the United States District Court condemned both the ship and its cargo—the decision being based on the doctrine of continuous voyage as originally laid down by Great Britain. The case was appealed to the Supreme Court, where a decision was rendered in 1866. The Springbok was ordered released as having a neutral destination, but the cargo was condemned on the ground that its ultimate destination, regardless of how many hands it might pass through, was the Confederacy. This separation of ship and cargo constituted an entirely new doctrine of international law. The owners appealed to the British government, but Lord Russell refused to take up the case, on the ground that under the British application of the doctrine of continuous voyage both ship and cargo probably would have been confiscated.

But the Springbok was like the biblical sowing of the wind and reaping of the whirlwind.

Great Britain's Situation

Great Britain had submitted to the almost complete destruction of her commerce with the Southern States during the Civil War. She had seen her textile mills shut down for want of cotton and her mill workers go hungry. Despite her grumbling protests and occasional intimations of reprisal, she had remained a fairly consistent neutral—especially in consideration of the greatness of her loss.

But she had not neglected to take into full account the precedents which were being established. She took especial note of the "doctrine of ultimate destination," to the establishment of which she had contributed materially by admitting its validity in the Springbok case.

The next British war was with the Boers. The South Africans were receiving supplies from Germany over indirect routes through German African possessions. The British captured four German merchantmen under the "ultimate destination" doctrine. The German government protested and Great Britain not wishing to meddle any further with the delicate international situation in Europe, which was threatening to bring about the world war" then and there, released the ships. She did not, however, abjure the doctrine of "ultimate destination." She simply didn't have enough at stake to make the argument worth while.

World War Conditions

Thus the matter stood at the opening of the World War.

Thus, for all practical purposes, it stands today, for during that struggle the actions at sea of both the allies and the central powers were so beclouded with emotionalism and so little concerned with absolute "rights" of neutrals that only a legacy of still greater confusion and inconsistency was left to international maritime law.

Both belligerents were fighting for their existences, they were fighting on a far greater scale than ever had been known in history before, and so involved had the scientific progress of a half century made war that there was hardly anything made or consumed by man that could not be considered, without much contortion of logic, war material.

The issues soon began to come to a head. Which belligerent made the first move is still debated. But the year 1915 found a situation in which, with the German Navy bottled up, the allies—principally Great Britain—were maintaining an effective blockade of German ports; and Germany, allegedly in retaliation, turned to that most terrible weapon of modern warfare, the submarine.

Henceforth it was to be a war of starvation.

In a sense, Germany had the advantage. Great Britain had to depend on obtaining supplies through her own ports. Germany had an almost unobstructed path across the Baltic by which she could obtain supplies from Norway, Sweden, Denmark and Holland. These were neutral nations and so was the United States. American commerce with the Baltic nations flourished.

Britain Seizes Vessels

Great Britain promptly applied the doctrine of "ultimate destination" and began halting American ships on the high seas and taking them into British ports, where the cargoes were examined and, if there was sound reason to believe that they contained war material destined for Germany or Austria, confiscated with due process of law. Protests began to pour into the State Department over these seizures, and at the same time over the sinking of American ships by German submarines.

Secretary of State Bryan was in a difficult position. At first he seemed to have forgotten all about the Springbok precedent and protested without reservation over the interference with American commerce with neutral ports.

Through Ambassador Spring-Rice, Earl Grey promptly called Mr. Bryan's attention to the Springbok case. He informed him that on that occasion "this government, whose nationals were the sufferers, looked below the surface at the underlying principle and abstained from all protest."

He went further, pointing out that the geographical position of Germany was such that it was unnecessary for her commerce, like that of England, to go through her own ports.

"The exact methods of carrying a blockade into effect," Earl Grey said, "have varied from time to time. The need of public notification, the requisite standards of effectiveness, the right of the individual ship to preliminary warning, are subjects on which different views have prevailed in different countries and in which the practice of countries has been altered from time to time.

"The one principle which has obtained universal recognition is that by means of blockade a belligerent is entitled to cut off by effective means the sea-borne commerce of the enemy."

Protests Are Continued

The American State Department continued to protest. In the Civil War cases, it was pointed out, the ships had been halted and searched on the open sea and taken into port only when it was ascertained that they actually contained "war material." The British were taking ships bound for neutral countries into port and searching them when they got there.

Great Britain replied that in Civil War days it was a comparatively simple matter for a boarding officer to determine whether any part of a ship's cargo was likely to prove of aid or comfort to the enemy, but that the scope of war since had been broadened so tremendously that experts were required to do this work. Instead of delaying commerce by taking ships to British ports for examin-

ation, it was pointed out, Britain really was speeding it up.

The official correspondence of those days is quite involved and difficult to interpret. The points raised never have been summarized, it is explained at the State Department. The confusion which confronts all students of the problem is a potent reason for the present demand for codification of the whole matter.

Never Admitted Validity

So far as can be determined the United States never admitted in the World War the validity of the doctrine of "ultimate destination" which she herself had originated in the Springbok case. This doubtless was inconsistent—but consistencies went to pot everywhere under the terrific stress and strain of the World War. The United States continued to protest and Great Britain to maintain her position in diplomatic correspondence.

But affairs rapidly were approaching a condition where there was no further need of argument.

Wholesale application by the British of the doctrine of ultimate destination constituted a nuisance to American shipping and possibly a serious violation of American rights. It was conducted, however, strictly in accordance with legal procedure and with scrupulous regard for the lives and comfort of American citizens.

On the other hand, Germany was sinking American ships bound for allied ports without warning.

The lesser evil was lost sight of in the greater. The United States was forced out of her neutrality into common cause with Great Britain and the argument over the doctrine of ultimate destination naturally came to an end.

By that time it was Germany and Austria against practically the whole world. The Scandinavian ports were still open to Germany, but with all other nations at war with her there was no source from which supplies could come, unless they were delivered by smugglers and traitors.

So this issue of "freedom of the seas" remains unanswered.

For times of peace there is Chief Justice Marshall's decision in the Aurora case that nations must decide for themselves what means to take to protect their interests —such as America's interests in keeping out liquor shipments—and that if these means "are such as unnecessarily to vex and harass foreign commerce foreign nations will resist their exercise and if they are such as are reasonable and necessary they will be submitted to."

And for times of war there is Earl Grey's flat statement: "The one principle that has obtained universal recognition is that by means of blockade a nation is entitled to cut off by effective means the sea-borne commerce of the enemy."—*Extracts, see 3, p. 32.*

Maritime Rights in Existing International Law

INTERNATIONAL law is a body of rules which are considered legally binding by civilized states. It is a law which directly affects states only, and according to most authorities does not confer rights on individuals. Thus "neutral rights" are not those of a neutral citizen engaged in trade, but are the rights of his state. The individual obtains his legal rights not from international law, but from his own state.

Some of the more fundamental neutral maritime rights under international law may be stated briefly as follows:

1. A neutral state has a legal right to let its nationals trade freely in war as in peace—even in contraband goods, or with blockaded ports—with one exception; neither the neutral state nor its nationals may furnish warships to either belligerent state, or send out military expeditions to such state, etc.

That is, a neutral state does not violate its neutrality because it refuses to forbid its citizens to trade in contraband. However, if a citizen engages in contraband trade, or trades with blockaded ports, he is liable to have his property confiscated if he is caught by either of the belligerents.

2. A neutral state has a legal right to maintain and protect from belligerent interference its own trade and the trade of its nationals, *except* for trade in contraband or with blockaded ports, and subject to belligerent rights of search, seizure, etc.

Thus, while a neutral state has an unqualified right to let its nationals trade at their own risk in contraband or non-contraband, its right to protect them is qualified: It can legally protect them only when they do not engage in those practices which belligerent states have a right to forbid, (contraband trade, violation of blockade, etc.).

The correlative obligations of belligerent states are:

1. Not to regard it as a violation of neutrality when a neutral state allows its nationals to trade freely in peace as in war, even in contraband goods or with blockaded ports—with the exception noted as to warships, etc.

2. Not to interfere with the trade of a neutral state or its nationals, except as permitted by and in accordance with the laws of search, seizure, contraband, blockade, etc.

On the other hand, the more fundamental maritime rights of belligerent states under international law are:

1. To require that neutral states abstain and cause their nationals to abstain from certain acts such as the sale or fitting out of warships or the fitting or sending out of military expeditions.

2. A belligerent state has a legal right to search, seize and condemn neutral vessels for carrying contraband, violating a blockade, performing unneutral service, etc., as long as it (the belligerent) performs these acts in accordance with the international law of search, contraband, etc.

And the correlative obligations of neutral states are:

1. To refrain from, and to cause its nationals to refrain from, acts such as the sale of warships, etc.

2. Not to prevent belligerents from searching, seizing or condemning contraband goods and vessels violating blockades, etc., in accordance with the rules of international law.—*Extracts, see 4, p. 32.*

Contraband and Blockade

I. Contraband

UNDER international law, belligerents have the right to intercept and prevent certain articles from being carried to their enemies, even in the absence of a blockade. These articles when destined for the enemy are called contraband and are regarded as objectionable in themselves, i. e., capable of warlike use.

Characteristics of Contraband Goods

The two essential elements of contraband are (1) the character of the goods and (2) an enemy destination. On the first point Grotius, while not employing the word contraband or the exact terminology here used, distinguished between *absolute* contraband, or articles such as arms,—manufactured and primarily and ordinarily used for military purposes in time of war; *conditional* contraband—articles which may be and are used by the armed forces or the civilian population, according to circumstances; and goods on the free list—articles exclusively used for peaceful purposes, i. e., *non-contraband* goods. Although this classification has been opposed by one or two publicists, it has generally been recognized as international law for more than two centuries.

The right to determine what particular goods shall be considered contraband has always been exercised by the belligerents. Though neutrals have protested when they considered the lists too all-inclusive, no rule prevents the belligerent from expanding them at will. There has always been a controversy as to what articles should be absolute contraband, and what should be placed in the other categories. Most neutrals have admitted that guns, ammunition, or military uniforms going to a belligerent are absolute contraband, but many have questioned the inclusion of mules and horses. The Declaration of London included the latter in its list of absolute contraband, though one of the American delegates said that at least one-half the members of the conference were opposed to the inclusion of horses and mules in the list.

The Problem of Food Supplies

Similarly it has always been difficult to decide which articles should be placed on the conditional contraband list and which on the free list. Most authorities agree that under ordinary circumstances foodstuffs should not be contraband, but it has been the practice of the leading powers to treat as conditional contraband foodstuffs directly destined for the use of the enemy army or navy. John Bassett Moore says that the rule on this subject was perhaps never better stated than by Lord Salisbury, when, in January, 1900, during the Boer War, he said, "Foodstuffs with a hostile destination can be considered contraband of war only if they are supplies for the enemy's forces. It is not sufficient that they are capable of being so used; it must be shown that this was in fact their destination at the time of the seizure."

The London Conference of 1909

The London Naval Conference of 1908-1909 sought to limit the absolute right of belligerents to make up their own contraband lists by specifying what articles might be considered contraband in the various classifications. At the same time the lists contained in the Declaration of London were not exclusive, as belligerents were to have the right to add to them by notification. The lists in the Declaration are reprinted in an appendix to this report.

Proof of Enemy Destination Required

Whatever the character of the articles in these lists, they are not contraband unless they have an enemy destination. International law requires, as a justification for seizure of neutral property on the high seas, that the captor prove before a prize court that the alleged contraband goods had an enemy destination when seized. In the case of absolute contraband, it is necessary to prove only that the goods have a destination for the enemy country, or territory occupied by the enemy. In the case of conditional contraband, however, there must be proof that the goods are destined not only for the enemy territory but for the use of the armed forces, or of a government department of the enemy state. For example, munitions of war or army uniforms (being of the nature of absolute contraband) would be liable to condemnation as good prize if it were shown that they had a destination for the enemy territory. But railway material or fuel (being of the nature of conditional contraband) could not be condemned merely upon proof that they were destined for such territory. Being only conditionally contraband they could be condemned only if a further destination for the use of the armed forces or government of the enemy could be proved. The distinction between combatants and non-combatants is the basis for this distinction between absolute and conditional contraband.

World War Contraband

Within a few weeks after the outbreak of the World War the belligerents declared the lists of absolute and conditional contraband, drawn up in the Declaration of London, to be inadequate. Articles which had never previously been regarded as capable of warlike use were found through necessity and new inventions to be of great value to the army. Many goods were shifted rapidly from the free list to the conditional contraband list and from the latter to the absolute contraband list. The final British list of contraband articles, which covered

two pages of the *London Gazette* of July 3, 1917, is reprinted in an appendix to this report.

Continuous Voyages

The doctrine of contitnuous voyage likewise played a large part in causing goods to be designated as absolute, rather than conditional, contraband. Under international law a belligerent could not ordinarily intercept neutral commerce between two neutral ports. But under the doctrine of continuous voyage, or ultimate destination, neutral goods of the nature of absolute contraband, going from one neutral port to another, might be seized and condemned if the captor could prove that the particular goods had in reality an ultimate enemy destination via the neutral country. That is, though ostensibly the voyage was between two neutral ports, if there was the intention to forward the goods to a belligerent, there existed in law a "continuous voyage," and the vessel or goods might be seized even when between neutral ports.

It was manifestly less difficult to prove an ultimate destination to enemy territory (as required for absolute contraband) than to prove ultimate destination for the enemy armed forces or government departments (required for the condemnation of conditional contraband), and the temptation was thus strong to shift goods from the conditional to the absolute contraband list.

Absolute and Conditional Contraband

As the war progressed the distinction between absolute and conditional contraband was practically broken down. It was argued by the belligerents that this was only natural, since the distinction between combatants and non-combatants was itself largely disappearing. This view was examined in an editorial in the American Journal of International Law which said:

"Again, in a war in which the nation is in arms, where every able-bodied man is under arms and is performing military duty, and where the non-combatant population is organized so as to support the soldiers in the field, it seems likely that belligerents will be inclined to consider destination to the enemy country as sufficient, even in the case of conditional contraband, especially if the government of the enemy possesses and exercises the right of confiscating or appropriating to naval or military uses, the property of its citizens or subjects of service to the armies in the field."

British Declaration of 1916

On April 13, 1916 a British White Paper declared that, due to the peculiar circumstances of this war, the distinction between absolute and conditional contraband had lost its value. Mobilization of the German civilian population to take part indirectly in the war had weakened the distinction between the armed forces and the civilian population; and, furthermore, most of the articles on the British conditional contraband list were now controlled by the German Government and available for the use of the armed forces. Therefore, so long as the exceptional conditions prevailed, Great Britain would treat all contraband alike in order to protect her belligerent interests. The other countries followed suit and, despite frequent protests by neutral governments, the war ended with the distinction between absolute and conditional contraband practically non-existent.

The arguments on which the Allies justified their abolition in practice of the distinction between conditional and absolute contraband have been seriously questioned by some international lawyers, notably John Bassett Moore. Referring to the distinction between absolute and conditional contraband, he makes the following statement:

".... the distinction .... never rested on logic, in the sense that it was imagined that 'conditional contraband', which includes foodstuffs, was not of military value. ... no one ever imagined that foodstuffs imported into a belligerent country could not be immediately consumed, or that the government could not or would not take for military use whatever it might need. . . ."

But neutrals, he says, maintained successfully "that the non-combatant mouths always vastly outnumbered the combatant, so that the preponderant consumption of food was ordinarily not hostile."

The distinction between conditional and absolute contraband represented a compromise between belligerent claims to stop trade and neutral claims to carry it on, "either of which if carried to its logical conclusion, would have destroyed the other, being in this particular like most other legal rules."

II. Blockade

DISTINCT from its right to prevent certain articles (contraband) from being carried to its enemies, a belligerent has a right under certain conditions to intercept all trade by sea with its enemy, regardless of whether the goods it seizes are contraband or non-contraband. This is the right of blockade.

Blockade has been defined as "the blocking by men-of-war of the approach to the enemy coast, or a part of it, for the purpose of preventing ingress or egress of vessels . . . . of all nations."

Blockade is a means of warfare which must be limited to the ports and coasts belonging to or occupied by the enemy. The Declaration of London merely reaffirmed a customary rule of international law of long standing when it stated (Art. 18) that "the blockading forces must not bar access to neutral ports or coasts."

Similarly, the rule of the Declaration of Paris of 1856 is a statement of customary law when it says, "Blockades in order to be binding must be effective—that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy."

Although not a signatory of the Declaration of Paris the United State contended that this rule "has been universally recognized as correctly stating the rule of international law as to blockade."

Another rule of international law is that a blockade must be applied impartially to the vessels of all nations.

Application of "Continuous Voyage" To Blockade

Prior to 1914 there was a cleavage between the Anglo-American and the Continental schools as to the application of the doctrine of continuous voyage to blockade. Could neutral goods sailing between two neutral ports be seized on the presumption that they would later violate a blockade, i. e., on the theory that they were in reality engaged in a continuous voyage to the enemy via an intermediate neutral port? At the London Conference of 1908-1909 the United States and Japan accepted unreservedly the application of the doctrine to blockade. The British Government took no definite stand on the question and the Continental nations opposed it. By a compromise the Conference decided that the doctrine of continuous voyage should be retained with regard to absolute contraband, but forbidden with regard to conditional contraband and with regard to blockade.

Thus, as regards blockade and continuous voyage, the Conference recognized as the existing international law on this point that "whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade if, at the moment, she is on her way to a non-blockaded port."

In other words, neutral goods could not be seized on a voyage between two neutral ports merely on the ground that they might later violate a blockade.

Allied "Measures of Blockade" Arouse Protest

In spite of the fact that in 1909 only the United States and Japan had defended the application of the doctrine of continuous voyage to blockade, in 1915 new defenders of the doctrine, as it applied to blockade, appeared. The British Order in Council of March 11, 1915, provided (Articles 1 and 2) for the establishment of a blockade of all German ports. This was within the rights of Great Britain and the Allies as belligerents, although the adoption of an "open" as opposed to a traditional "close" blockade gave rise to some protest.

Articles 3 and 4, however, of the same Order called for the application of the doctrine of continuous voyage to blockade. They provided that every merchant vessel sailing to (or from) a port *other* than a German port, carrying goods with an enemy destination (or origin), or which were enemy property might be required to discharge such goods in a British or allied port, where, if not contraband, and if not requisitioned, they would be restored "upon such terms as the Court may in the circumstances deem to be just, to the person entitled thereto." In other words Great Britain and France announced that they would "hold themselves free to detain and take into port ships carrying goods of presumed enemy destination, ownership, or origin." But that "it is not intended to confiscate such vessels or cargoes unless they would otherwise be liable to condemnation."

Position of the United States

The United States immediately protested against the ambiguity of the proposed measures.

"The first sentence claims a right pertaining only to a state of blockade. The last sentence proposes a treatment of ships and cargoes as if no blockade existed. The two together present a proposed course of action previously unknown to international law."

In a further protest the United States said that if the measures proposed were actually carried out they would constitute "a practical assertion of unlimited belligerent rights over neutral commerce within the whole European area, and an almost unqualified denial of the sovereign rights of the nations now at peace."

All mention of the word "blockade" was scrupulously avoided in the Order in Council of March 11, giving effect to the Allied measures. In presenting the proposals to the House of Commons, March 1, 1915, the Prime Minister (Mr. Asquith) said:

"Now . . . . . from the statement I have just read out of the retaliatory measures we propose to adopt, the words "blockade" and "contraband" and other technical terms of international law do not occur, and advisedly so. In dealing with an opponent who has openly repudiated all the restraints, both of law and of humanity, we are not going to allow our efforts to be strangled in a network of juridical niceties. We do not intend to put into operation any measures which we do not think to be effective, and I need not say we shall carefully avoid any measures which violate the rules either of humanity or of honesty. Subject to these two conditions I say to our enemy . . . that under existing conditions there is no form of economic pressure to which we do not consider ourselves entitled to resort. If, as a consequence, neutrals suffer inconvenience and loss of trade, we regret it, but we beg them to remember that this phase of the War was not initiated by us."

In similar vein Sir Samuel Evans, President of the British Prize Court, said, during the argument in the *Hakam*, that "what was called a blockade was not a blockade at all except for journalistic and political purposes."

Great Britain Defends "Blockade Measures"

Although at first Great Britain sought to avoid defending the "blockade" as a legal measure, the protests of the United States Government and of an influential section of the American press soon caused a change of front. The Order in Council of March 11, 1915 did not use the word "blockade," but the note of the British Government accompanying the Order in Council stated that the object of the Order was "to establish a *blockade* to prevent vessels from carrying goods for or coming from Germany" —and thereafter the word "blockade" was used in discussing the measures taken to prevent commerce with Germany.

The principal British argument was that this blockade was merely an adaptation of the old principles of blockade to new circumstances of maritime warfare. The German ports were blockaded, but trade with Germany continued through neighboring neutral countries. The United States seemed to believe, said the British Government, that if the enemy were so situated that he could conduct his trade easily and securely through neighboring neutral countries, the belligerent could not interfere with trade with those neutrals, but must allow his adversaries those channels of trade. The British Government felt, however, that the doctrine of continuous voyage gave it the right to intercept enemy trade passing through neutral ports.

"As a counterpoise to the freedom with which one belligerent may send his commerce across a neutral country

without compromising its neutrality, the other belligerent may fairly claim to intercept such commerce before it has reached or after it has left, the neutral State, provided, of course, that he can establish that the commerce with which he interferes is the commerce of his enemy and not commerce which is bona fide destined for or proceeding from the neutral State. It seems, accordingly, that if it be recognized that a blockade is in certain cases the appropriate method of intercepting the trade of an enemy country, and if the blockade can only become effective by extending it to enemy commerce passing through neutral ports, such an extension is defensible and in accordance with principles which have met with general acceptance."

The British Position

The United States should remember, said Great Britain, that this blockade was unusual: In this blockade the object was not merely to prevent vessels from reaching or leaving German ports, but to prevent goods of any kind from reaching or leaving Germany. Yet in order to ease the burden on neutral commerce the Allies were attempting to substitute for the confiscation of commerce merely the control of commerce—direct or indirect—with Germany. Even if the blockade were an extension of the doctrine of continuous voyage, continued the British argument, it should be remembered that international law, to be of any value must conform to new methods of warfare.

At any one time the existing rules of naval warfare were formulated on the experience of previous conditions. However, when these conditions changed, the law must be extended in conformity with the changes. In this war the existing rules of maritime law were largely those formulated over a century since by Lord Stowell. Now, however, the introduction of steamships, railways, cables, submarines and other inventions had revolutionized condition of trade. Science had ben able to render almost every article of commerce of direct or indirect use to the armed forces. The old condition of a "nation in arms" was returning after the lapse of centuries and the distinction between combatants and non-combatants was difficult to uphold. To meet these new conditions Prize Courts had attempted, not to make new law, but to develop existing principles of law. In a defense of the British blockade measures an English writer in the British Year Book of International Law said:

There is a considerable tendency (perhaps not unnatural, in view of the fact that international law is really based on the practice of nations) to hold that when a thing is done for the first time it must be illegal because it has not been done before, but if it is done again to accept it on the ground that there is a precedent for it. This, however, is on unscientific method of procedure, and the true test surely is whether the new development is consistent with the main underlying principles of law and is necessitatel by the changed circumstances in which it is applied. It is by this test that the Allied blockade measures ought to be judged.

The Scandinavian Ports

The United States directed its criticism against the character, the effectiveness, and the legitimacy of the blockade. The blockade was ineffective, said the United States, because, although it purported to be a blockade of all German ports, it was notorious that the Scandinavian ports were open to trade freely with German ports. Moreover, the attempt of Great Britain to apply the doctrine of continuous voyage to non-contraband goods, en route to Scandinavian countries, was an illegal extension of the doctrine. The voyage of goods from the United States to Scandinavian ports was legal and the further voyage from Scandinavia across the Baltic to Germany was also legal since there was no effective blockade. Thus, in effect, an attempt was made to extend the doctrine to blockade where no blockade existed.

The United States Government argued further that the so-called blockade was in effect no less than a blockade of neutral ports. What Great Britain was admittedly trying to do, i. e., prevent goods of any kind from reaching or leaving Germany, the United States protested was not permitted by the law of blockade. The law of contraband permitted a belligerent to seize *contraband* goods *en route* to the enemy. But the belligerent could not seize non-contraband goods except for breach of blockade and a blockade had to be limited to the ports and coasts of the enemy. The British argument, that "the one principle which is fundamental and has obtained universal recognition is that by means of blockade a belligerent is entitled to cut off by effective means the sea-borne commerce of his enemy," assumed too much. The right of blockade is a right to block the approach of vessels to the enemy ports and coast—not a right to cut off all the sea-borne commerce of the enemy.

The Practical Result

It was for this reason that the London Naval Conference refused to sanction the application of the doctrine of continuous voyage to blockade. No blockade was violated by goods on a voyage, say, from the United States to Holland during the last war, because the belligerent had no right to blockade neutral ports. Furthermore, no blockade was violated when the same goods were sent by land from Holland to Germany. These goods going from the United States to Holland could be seized, however, if they were absolute contraband, upon proof that they were in reality on a continuous voyage to Germany. But this would be an application of the doctrine of continuous voyage to contraband, not to blockade. And any attempt to seize non-contraband goods *en route* to Holland thus became a blockade of neutral ports.

A practical way out, of course, was for belligerents to place all goods possible on the contraband list and seize them before they reached Holland, under an application of the doctrine of continuous voyage to contraband. This was done to a great extent.—*Extracts, see 4, p. 32.*

Official and Unofficial Comment on Rights of Belligerents and Neutrals

The British White Paper

In December, 1929, the British Government issued a statement of its position regarding the optional clause of the World Court in the course of which the subject of the rights of neutrals under the Covenant of the League of Nations was discussed. This document, known as a "White Paper," aroused comment in the United States which drew a statement from Hon. Henry L. Stimson, Secretary of State, on December 31. That portion of the British White Paper touching on the rights of neutrals and Secretary Stimson's reply follow.

Disputes as to the exercise of belligerent rights at sea have in the past arisen from the clash of two conflicting rights; the right of the belligerent to make use of his naval strength to interfere with the sea-borne commerce of the enemy, and the right of the neutral to continue his trade irrespective of the existence of a war in which he is not engaged.

Both of these rights are, within certain limits, equally recognized by international law, and in the course of the last 200 years certain principles have emerged whose effect was to define the respective scope of the conflicting rights and to lay down certain rules for regulating the situation which arose from their clash.

No one, however, will suggest that the establishment of rules of international law on this subject has reached a stage which eliminates the possibility of disputes between belligerents and neutrals, and unless one is prepared to accept the possibility of the production and general acceptance of a code which would provide a satisfactory solution for every question of this sort which might arise in a quite indeterminate future, it is difficult to see how this process could ever eliminate the possibility of serious disputes of this nature. And public opinion in this country is naturally sensitive as regards any action which might be considered as unduly limiting the exercise of British sea power in time of war.

But the whole situation described in the preceding paragraph rests, and international law on the subject has been entirely built up, on the assumption that there is nothing illegitimate in the use of war as an instrument of national policy, and, as a necessary corollary, that the position and rights of neutrals are entirely independent of the circumstances of any war which may be in progress. Before the acceptance of the Covenant, the basis of the law of neutrality was that the rights and obligations of neutrals were identical as regards both belligerents, and were entirely independent of the rights and wrongs of the dispute which had led to war, or the respective position of the belligerents at the bar of world opinion.

Now it is precisely this assumption which is no longer valid as regards States which are members of the League of Nations and parties to the Peace Pact. The effect of those instruments, taken together, is to deprive nations of the right to employ war as an instrument of national policy, and to forbid the States which have signed them to give aid or comfort to an offender. As between such States, there has been in consequence a fundamental change in the whole question of belligerent and neutral rights.

* * * the conditions which might produce a justifiable dispute between this country as a belligerent and another member of the League would fulfill their obligations under Article 16, in which case we should not require to effect any interference with their commerce, or if they did not, and such interference on our part therefore became necessary, they would have no ground on which to protest against the enemy, which would be inconsistent with their obligations under the covenant. In other words, as between members of the League, there can be no neutral rights, because there can be no neutrals.

Statement by Secretary Stimson

Some days ago the press reported the publication of a British White Paper, without giving the full contents of the paper, and considerable comment and discussion was excited here by the supposed assertion therein that in any future war there could be no neutrals. It was apparently assumed here that this assertion had been made by the British Government as a general fact without any limitations, and that the British Government contended that this situation followed as a result of the execution of the Kellogg-Briand Pact.

I have now received a copy of the British White Paper in question and have read it carefully, and I find that these assumptions as to the position of the British Government are quite unfounded. The argument made by the British Government was based upon the relations of that government to its fellow-members in the League of Nations; and upon the obligations assumed by members in that covenant; and its argument was that "as between members of the League there can be no neutral rights because there can be no neutrals."

Their argument thus does not apply to the position of the United States as a signatory of the Kellogg-Briand Pact. As has been pointed out many times, that Pact contains no covenant similar to that in the covenant of the League of Nations providing for joint forceful action by the various signatories against an aggressor. Its efficacy depends, as has been pointed out many times, solely upon the public opinion of the world and upon the conscience of those nations who sign it. There is nothing said in the British White Paper contrary to this fundamental distinction. The entire argument of that paper clearly shows that it was addressed solely to the obligations created by the League of Nations.

Freedom of the Seas

From Foreign Affairs, London, December, 1928

Edited by Norman Angell

LET us put the issue in its simplest terms. Britain is at war, say, with a state like France or Germany. An American merchant receives an order for a shipload of cotton or lard or foodstuffs from a Dutch merchant. The cargo is shipped in an American or Dutch, or, for that matter, Italian ship. America is at peace with England, at peace with Holland, at peace with Italy, at peace with England's enemy, at peace with the world. That ship is stopped by a British warship, taken into a British port, and a British court, deciding that the cargo is ultimately intended for Britain's enemy, condemns and seizes the cargo. Neither the American, nor the Dutch, nor the Italian parties are represented on the bench of that court. It is a purely *ex-parte* decision. The Americans say:

The American Point of View

"Our whole foreign commerce, our right to trade with nations with which we are at peace, can at any moment be forbidden by a foreign State—Britain—whenever that State chooses to go to war. Our rights of movement in the world are subject to the will of Britain, whenever she happens to be at war.

"We intend to vindicate our right to the freedom of the sea, and for that purpose we shall have a navy so great that when we make representations they will be listened to, even by Great Britain."

The Washington Post expresses itself editorially on the point as follows:

"The United States is entitled to an absolutely free field for foreign commerce. When foreign Powers are at war the United States has a right to remain neutral and carry on neutral commerce without interference. It must have a navy sufficiently strong to enforce its neutral rights. Its flag becomes a despised rag if its people do not keep it inviolable upon every sea."

And later:

"War between Great Britain and other foreign Powers under modern conditions would either compel the United States to enter the war on one side or see its natural commerce swept away."

The British Point of View

The case from the American point of view seems a strong one. But the British case, from the British point of view, is equally strong. The Briton in effect says: "To surrender the right of search and capture would be to surrender in favour of our enemy the most powerful, in most cases the only, instrument of defence which we possess. Without a blockade exercised in just the way which created such American wrath in 1915 and 1916 Germany could never have been defeated."

That the British case is strong is proved by the fact that the very measures which in 1915 and 1916 excited such American indignation, against which, as a neutral, America protested so violently, were the very measures which she enforced as against others when she in her turn entered the war. The policy which, as a neutral, she declared to be intolerable tyrannical, was the policy which she adopted when a belligerent.

The Struggle of Two Rights

It is because there is so much to be said for both the British and the American standpoint, because that standpoint is apt to seem to each so strong, that the danger of collision is correspondingly great. It is a difference which may produce that most dangerous and implacable of all situations: The struggle of two rights.

This was emphasized on the morrow of Lord Lee's speech, from which quotations have been made above, by the New York World, commenting on the speech in these terms:

The British Admiralty

"Beneath all the wild talk on both sides of the Atlantic there is this cardinal fact, which is the root of the whole controversy. The British Admiralty, and that part of the British nation which shares its views, holds fast to the claim that Great Britain shall have the power to say who shall and who shall not sail the sea in ships. It is a claim which would put the interest of all other Powers in jeopardy whenever Great Britain is at war. It is an impossible claim, looked at from any non-British point of view, for it amounts to saying that the interest of mankind upon the seas shall in law and in fact be subject to the will of the British Admiralty. It is resistance to this claim which explains the whole controversy."

President Wilson's Position

There is, of course, just one way out, and it was indicated by President Wilson himself when he was asked why the Freedom of the Seas (namely, the defense of neutral right in war time) was not incorporated into the Covenant of the League. He replied: "Because now, if there should be war, there will be no neutrals. The choice is either no war or no neutrals." The belligerent powers which England has exercised in the past must in future belong only to the nations as a whole, as a police power against a recalcitrant member of society. They cannot henceforth be used for "private war." It is towards this end that all modern writers on this subject are gradually feeling their way. It is the conclusion of the recent work, Freedom of the Seas, by Commander Kenworthy, who says:—

"The British will have to envisage now the eventual renunciation of the right of independent blockade instead of, as now, tacitly recognizing that in future it will be impossible to enforce it without American approval. While the Americans will have to envisage now, eventually recognizing, that Freedom of the Seas and Sea Law cannot be guaranteed without an Anglo-American Convention which will have to be brought into relation with the Covenant of the League.

He sums it up elsewhere in the same book in these terms:—

"Sea power will be accepted when it is sea police, and will make for peace, but will be rejected when it is sea profiteering and will make for war."

A Suggested Compromise

A few days ago the *Manchester Guardian* printed the following from its New York correspondent:—

"A possible solution of the Anglo-American naval dilemma is suggested by Mr. Charles P. Howland, one of the best-known American students of international affairs and Director of Research for the Council on Foreign Relations. Mr. Howland thinks differing views of the freedom of the seas are at the bottom of the cruiser dispute, and suggests a possible compromise. He distinguishes between private wars of the old variety and public wars waged under the League, the Locarno treaties, or similar international sanction. Then he offers this formula for a possible treaty:—

"'The contracting parties agree not to interfere with neutral non-contraband commerce at sea in case of a private war.

"'The contracting parties will not insist on the traditional rights of neutral trade in case of public war.'

"Mr. Howland feels that the first proposal would require a British concession, the second one a concession by America. He believes, however, that both would be politically possible."

The Shotwell Plan

Professor Shotwell, of Columbia, a year or two since, urged a variant of the above formula to the effect that the United States should make a declaration: (a) accepting the League definition of "aggressor," i. e., the State which refusing arbitration when its rival accepts it, goes to war; (b) agreeing to close its ports and markets to such a State. This would furnish so strong a motive to a prospective belligerent for arbitrating first in order to secure access to Ameriman markets for its materials of war, that arbitration would be assured. And once arbitration is assured the risk of war is reduced to vanishing point.

The Free Seas

By **W. Arnold-Forster,**

National Council for Prevention of War, London

LIKE the armaments problem, the Freedom of the Seas problem can only be solved if there is political agreement upon the fundamental principles: The problem is not purely a technical one, and if the attempt were made to solve it on purely technical lines, without the fundamental political agreement, that attempt would fail, just as the Coolidge conference for naval disarmament failed.

Now, when the Kellogg Pact has been ratified on both sides of the Atlantic, we are in a far better position to tackle both Freedom of the Seas and disarmament. And now we have the assistance of the recent American declaration on naval disarmament.

The principles of that admirable declaration are just as relevant to Freedom of the Seas as to disarmament. The Kellogg Pact should enable us to get rid of one of the chief obstacles in the way of a civilized international order—the belief in armaments and the weapons of commerce—prevention at sea as legitimate "instruments of national policy."

What, then, should be our contribution?

1. Ought we not to stand frankly, and without reserve, for the new Freedom of the Seas—for the complete renunciation of the last remnants of the right to use commerce-prevention at sea as a private weapon?

2. Ought we not to maintain that, for the League of Nations, and only for the League, we are bound to reserve those wide rights of effective commerce-prevention that the Covenant provides for the constraint (if need be) of the peace-breaker?

3. Ought we not to propose to the United States, and to all other nations, the full acceptance in advance of means of peaceful settlement for all our international disputes of whatever kind?

4. Should we not thereby be establishing the conditions for radical disarmament (including, for instance, the mutual abolition of the five existing battle-fleets and—if possible—of all submarines)?

Such a contribution might prove ineffectual. It is possible that the Powers will throw away the opportunity afforded by the American offer to agree to any reduction of naval tonnage, however drastic, that leaves no type of war vessel unrestricted; and it is possible that, if the Powers do so abuse their opportunity, the American demand for a big Navy, originally fostered by the desire to challenge British blockade measures in the war, will grow into something different and more dangerous. It is possible that, notwithstanding the implications of the Pact, American opinion will insist upon wide belligerent rights in private war, or may demand the drastic limitation of the rights claimed for the League.

Yes, it is possible, of course, for the world to choose all sorts of erroneous courses; it is possible that our generation will fail in its supreme endeavour, the creation of "trustworthy barriers against war," and that our civilization will indeed go down in ruin.

But our course is clear. We can best contribute to a satisfactory outcome by our whole-hearted support of the modern doctrine of Freedom of the Seas. The high seas and international seaways should only be closed, if closed at all, by international covenants.—*Extracts, see 5, p. 32.*

Is Freedom of Seas Doctrine Obsolete?

By Prof. Harold S. Quigley,

University of Minnesota

THE tremendous efforts that both the Allies and the Central Powers made to destroy one another's commerce prove that they regarded it as a complete entity promoting the economic persistence of the enemy State. Government control of private enterprise in war-time today means the utilization of all essential imports and exports for the furtherance of the purposes of the State. Hence, everything is liable to treatment as contraband, and blockade has been expanded in ways hitherto unimagined. The freedom of the seas today, as in past centuries, is a question on which each State decides its attitude, not on any humanitarian basis but from the standpoint of the usefulness to itself of the control of enemy commerce in time of war.

The full significance of this conclusion is demonstrated by the embodiment of restrictions upon commerce among the enforcement provisions of the League Covenant. Members of the League agree in Article XVI to assist in preventing "all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a member of the League or not." This provision attests the recognition of trade control as a powerful sanction of international policy. It does not sound like "freedom of the seas." If, however, the League should be able to police the world, neutrality would disappear and there would be universal cooperation against an aggressor State, which, as the enemy of all, would be deprived of the advantages which neutral nations now enable it to enjoy. The same results would attend the implementing of the Pact of Paris by similar sanctions. The only security of a free sea is peace.

We may, in the light of these facts, conclude that the doctrine of the "freedom of the seas" has become another "obsolete shibboleth." This is an arresting thought to any citizen of the world's potentially greatest naval and commercial power, one that opens a number of highly interesting lines of inquiry upon which space limitations forbid the present discussion to embark. If it be a sound conclusion it may sufficiently explain why the calling of a conference on that portion of maritime law known as the law of prize has been deferred. Such a conference at this time could have ended only in disappointment. To restate the Declaration of Paris would mark no advance upon existing law. The Declaration of London could not be treated seriously at this time. A conference on maritime law that was not prepared to legalize the abolition of contraband and blockade would accomplish nothing toward freeing the seas. It is apparent that neither Great Britain nor the United States is ready for such a sweeping reform of sea law. The former could not accept it even if she desired it because of her obligations under the Covenant of the League of Nations.

The anticipated naval conference, therefore, must conduct its deliberations upon the basis, on the one hand, of the rights of neutrals as established by the Declarations of Paris, above stated, and, on the other, of the practices of belligerents which have rendered neutral rights ineffective. Concerning the beneficial results of such a conference there can be no doubt. At the same time it must be regretfully recognized that the conference, merely as a naval conference, will do nothing to alter the relations between Great Britain belligerent and American neutral, or vice versa. For the improvement of those relations, so pregnant with disaster, either the League of Nations must revise its covenant or the United States must find ways of cooperation with the League in war as well as in peace.—*Extracts, see 6, p. 32.*

Definitions of Freedom of the Seas

Prof. Pitman B. Potter

We may, however, for practical purposes, adopt tentatively a meaning which will in the end prove to be the most precise and at the same time the most comprehensive definition least calculated to prejudice any conclusions to be drawn regarding the political and ethical aspects of the case. We shall start by assuming that, at any given time, the formula "the freedom of the seas" refers to that measure of liberty accorded by international law at that time to the nations or states recognized by international law, or to their subjects or citizens, in the use of the sea and its component parts.—*Pitman B. Potter in "The Freedom of the Seas in History Law and Politics."*

Grotius

Every nation is free to travel to every other nation, and to trade with it.—*Grotius.*

President Woodrow Wilson

"Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenant."—*President Woodrow Wilson, Speech, Joint Session of Congress, Jan.* 8, 1918.

Rear Admiral Ernest A. Taylor

The principle of the Freedom of the Seas is a ridiculous proposition. . . . There has come this suggestion of the freedom of the seas, meaning that all sea-borne traffic, whether belligerent or neutral, should be permitted to carry on in war as in time of peace."—*Rear Admiral Ernest A. Taylor, Royal British Navy, retired. Speech, October* 26, 1928.

(*Continued on page* 32)

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(Continued on page 32)

The 71st Congress

Duration of the 70th Congress, March 4, 1929-March 4, 1931

First, or "Special" Session, Convened April 15, 1929. Adjourned November 22, 1929

Second, or "Long" Session, Began December 2, 1929.

In the Senate
Membership
Total—96

53 Republicans 39 Democrats
1 Farmer-Labor
2 Vacancies

Presiding Officer
President: Charles Curtis, R.
Vice-President of the United States

Floor Leaders

Majority Leader	*Minority Leader*
James E. Watson, Ind., R.	Joseph T. Robinson, Ark., D.

In the House
Membership
Total—435

267 Republicans 165 Democrats
1 Farmer-Labor
3 Vacancies

Presiding Officer
Speaker: Nicholas Longworth, R.
Member of the House from Ohio

Floor Leaders

Majority Leader	*Minority Leader*
John Q. Tilson, Conn., R.	John N. Garner, Tex., D

The Coming Month in Congress

By **Norborne T. N. Robinson**

AS CONGRESS prepared to resume its sessions after the Christmas holidays comparative uncertainty marked its plans for the month of January on account of the inability of members of the Senate to gauge the length of time it would take the upper House to reach final action on the Tariff Bill.

This measure is still the unfinished business of the Senate and will remain so until a final vote is had and it is sent back to the House with the innumerable Senate amendments.

A Year for Tariff Revision

In January, 1930, it will be a year since consideration of the Tariff Bill first began, since it was on January 7, 1929, that the House committee on ways and means first began its hearings on the bill. President-elect Hoover had announced his intention of calling an extraordinary session of Congress to meet in the spring to consider farm relief and tariff measures.

It was in anticipation of this that the House committee went to work in advance in order that it might have most of its hearings over and done with by the time the extra session met. The extra session met on April 15 and six weeks later on May 28 the House had passed the bill and sent it to the Senate.

House Acted Promptly

With its big majority the Republican organization in the House, after allowing a reasonable time for debate on the floor, had no trouble in passing the bill promptly.

The situation in the Senate was far different, not only because the Republicans lacked a working majority but because various organizations and individuals interested in the effects of the Tariff Bill, who were dissatisfied with the measure as passed by the House demanded that the Senate committee on finance, to which the bill had been referred when it reached the Senate, should hold hearings and give the interested persons an opportunity to explain why this or that schedule in the House bill should be altered.

Once hearings began the pressure became even stronger and it was not until September 4 that the committee reported the bill to the Senate.

Party Lines Broken in Senate

Votes on various schedules in the Senate soon proved that party lines had broken down and because there was no working majority on either side progress on the bill was inevitably retarded.

The few predictions that are being made as the DIGEST goes to press indicate that there is hope that the Senate will finally dispose of the bill around the middle of February; that the House will promptly disagree to the Senate amendments and ask for a conference. How long the conference committee will take to reach an agreement and how long thereafter it will take the two Houses to agree to the conference report not even the most willing prophets in either House will venture to predict. Hope is expressed, however, that sometime in April Congress will have finished its consideration of the Tariff Bill and will have sent it to the President for signature.

Expected Clashes in Conference

In addition to sharp controversies over various schedules, the heaviest clashes between the House and the Senate are expected to come over the export debenture provision and the flexible tariff provision as written into the bill in the Senate by the combination of Democrats and western Republicans, led by Senator Norris of Nebraska.

Recent charges by Senator William E. Borah, Idaho., R., that the Administration's attempts at prohibition enforcement are not as effective as they should be served to increase interest in prohibition among members of both Houses and efforts will undoubtedly be made to take this question up in the Senate. The indications are, however, that, while individual Senators will undoubtedly express their views on the subject, anything like a definite consideration of the enforcement problem will be held off in the Senate until after the Tariff Bill is out of the way.

Prohibition Speeches Expected

Likewise, the House will unquestionably hear a number of speeches on the subject of prohibition enforcement but will not, in the immediate future, take up serious consideration of legislation on the subject.

When the prohibition problem is taken up in earnest the first phase to be considered will be the Administration plan to transfer the prohibition enforcement machinery from the Treasury to the Department of Justice.

House Works on Appropriation Bills

In the meantime the House is going forward with its work on appropriation bills and will grind at them steadily with a view of insuring their final passage before June 30, when the current fiscal year ends.

The appropriation bill most likely to cause controversy will be the naval appropriation bill in which must be carried appropriations for continuing the program for building fifteen cruisers already authorized, providing the program is to be continued.

Whether it is to be continued will hinge upon the outcome of the London Conference on the Limitation of Naval Armaments, scheduled to begin the latter part of January. It is probable, therefore, that the naval appropriation bill will be held back until the London Conference has proceeded to the point where the number and size of the cruisers the United States shall build will have been settled.

The Civil Service Retirement Bill

In addition to the appropriation bills the House will consider, while the Senate is working on the Tariff Bill, the bill providing for a number of changes in the Civil Service retirement laws. The Senate Bill, S. 15, passed the Senate on January 6. It was introduced by Senator Porter H. Dale, Vt., R., and is identical with H. R. 1850, introduced by Representative Frederick R. Lehlbach, N. J., R. The measure therefore has become generally known as the Dale-Lehlbach Civil Service Retirement Bill.

Its principal provisions are for optional retirement of Government Civil Service employes of various grades after thirty years' service at the ages of sixty, sixty-two and sixty-five, according to the character of their work, and mail carriers and others at the ages of sixty, sixty-three and sixty-five. The retirement pay is raised from $1,000 to $1,200 per annum.

The House Committee on the Census will hold brief hearings and is expected to report the Dale bill without amendments in order to make its passage easier.

Congress and Politics

Further developments in the programs of both the House and the Senate will be tinged to a great extent by the political situation. The entire membership of the House and one third of the membership of the Senate must face election campaigns in the autumn of 1930 and naturally members of both parties are anxious to make such records as they feel will result in support of the candidates of their respective parties in the November elections.

Already the Tariff Bill has been subjected to a great deal of political treatment and discussions of prohibition enforcement unquestionably will have their strictly political phases.

The Administration Facing Opposition

The same will be true of other measures that have Administration backing or opposition as the case may be. It is too early in the session for anything like farreaching programs to have been worked out and it will probably be the latter part of January before the Administration forces and those opposed to them will start the real battle.

In the meantime the Senate is having considerable discussion in the matter of committee appointments to fill vacancies caused by the resignation or death of several Senators who held posts on important committees. Naturally politics is entering into these discussions also.

Action Taken by Congress

A Daily Summary of the Proceedings of the House and Senate

December 2, 1929 to December 21, 1929

Note—This department contains a record of action on the floor of the House and the Senate. By following it from month to month the reader obtains a compact but complete review of the work actually done by Congress throughout the session. The principal abbreviations used are the following: H. R. means House bill; H. Res. means House Resolution; H. J. Res. means House Joint Resolution; H. Con. Res. means House Concurrent Resolution; S. means Senate Bill; S. Res., Senate Resolution; S. J. Res., Senate Joint Resolution, and S. Con. Res., Senate Concurrent Resolution. If reference is made to the consideration or action by the Senate of a House bill or resolution, it means that the House has passed it and sent it to the Senate, and vice versa.

Monday, December 2, 1929

Senate:

Charles Curtis, of Kansas, Vice-President of the United States called the Senate to order at 12 o'clock noon, beginning the Second or "long" session of the Seventy-first Congress.

The opening prayer was delivered by the Chaplain of the Senate, the Rev. Dr. ZeBarney Thorne Phillips.

Sixty-nine Senators were present.

Agreed to S. Res. 167, that the Secretary of the Senate inform the House that a quorum of the Senate was assembled and that the Senate was ready to proceed to business.

Adopted a resolution, S. Res. 168, offered by Mr. Watson, Ind., R., Republican floor leader of the Senate, for the appointment of two Senators to join with the Committee of the House to notify the President that a quorum of each House of Congress had assembled and that Congress was ready to receive any communications the President might be pleased to make.

The Vice-President appointed Mr. Watson, Ind., R., and Mr. Robinson, Ark., D.

Adopted resolution, S. Res. 170, offered by Mr. Robinson, Ark., D., expressing the regret of the Senate on the death of Senator Francis E. Warren, of Wyoming.

Adjourned out of respect for the late Senator Warren.

House:

Nicholas Longworth, of Ohio, Speaker of the House of Representatives, called the House to order at 12 o'clock noon.

The opening prayer was delivered by the Rev. James Shera Montgomery.

Three hundred and ninety-one members were present.

Agreed to H. Res. offered by Rep. Tilson, Conn., R., floor leader, for the appointment of three members of the House to join with the Committee of the Senate to notify the President of the assembling of Congress. The chair appointed Representatives Tilson, Conn., R., Hawley, Oreg., R., and Garner, Tex., D.

Representative Hawley, Oreg., R., introduced a resolution for the reduction of taxes for 1929 in the amount of $160,000,000. This resolution, he stated, would be taken up by the House Ways and Means Committee at its meeting on Wednesday, December 4, and would be taken up by the House on Thursday, December 5, 1929.

Representative Garner, Tex., D., spoke on the organization of the House of Representatives and the membership of various committees.

Passed H. Res. 73, that the Speaker of the House, by means of the radio, convey to Commander Richard E. Byrd, and his associates the congratulations of the House on their recent successful flight over the South Pole.

Mr. Houston, of Hawaii, announced the death of Hon. William Paul Jarrett, late representative of the people of Hawaii, in Congress.

Agreed to H. Res. 74, expressing the regret of the House on the passing of Hon. Francis E. Warren, of Wyoming.

Adjourned out of respect for the late Senator Warren.

Tuesday, December 3, 1929

Senate:

The President's annual message to the Congress was read by the Chief Clerk of the Senate, John C. Crockett.

Began consideration of S. Res. 111, that William S. Vare be denied a seat in the Senate from Pennsylvania, because of primary expenditures.

Messrs. Norris, Nebr., R., Caraway, Ark., D., Copeland, N. Y., D., and others spoke on the resolution.

Rejected by a vote of 43 to 31, not voting, 19, a motion to defer consideration of the Vare case.

Executive session.

Adjourned.

House:

The President's annual message to the Congress was read by the Clerk of the House, Hon. William Tyler Page.

Adjourned.

Wednesday, December 4, 1929

Senate:

Received, and referred to the appropriate committees, annual reports of various executive departments and independent offices.

Messrs. Reed, Pa., R., and Simmons, N. C., D., were appointed members of the Joint Committee for the Disposition of Useless Papers in the U. S. Veterans Bureau.

Resumed consideration of S. Res. 111, denying William S. Vare a seat in the United States Senate from Pennsylvania.

Messrs. Norris, Nebr., R., Robinson, Ark., D., Reed, Pa., R., Fess, Ohio, R., Caraway, Ark. D., and others spoke on the resolution.

Mr. Vare made a speech defending his right to a seat in the Senate.

Mr. Blease, S. C., D., spoke briefly concerning the action of Southern States in similar instances.

The President's message on the Budget of the United States was read.

Recessed.

House:

Received from the President the national budget calling for nearly $4,000,000,000.

The clerk of the House, Hon. William Tyler Page, read the President's budget message.

The House Ways and Means Committee favorably reported H. J. Res. 133, the $160,000,000 tax reduction resolution.

Representative Ramseyer, Iowa, R., announced he would file a minority report on the resolution.

Representative Clancy, Mich., R., announced the death of former Representative Alfred Lucing, Mich., R., and spoke briefly in praise of his predecessor.

Adjourned.

Thursday, December 5, 1929

Senate:

Received, and referred to the appropriate committees, annual reports from various executive departments and independent offices.

Discussed the police and fire departments of the District of Columbia. Senator Blease, S. C., D., told the Senate District of Columbia sub-committee investigating these departments that he had been served with a subpoena of the District Supreme Court and called attention to a decision of the subcommittee that it would defeat the purposes of the investigation if the names of witnesses were revealed.

Mr. Shortridge, Cal., R., as Chairman of the Senate Committee on Privileges and Elections, reported to the Senate that a majority of the Committee had agreed that Senator-elect William S. Vare, of Pennsylvania, was legally elected to the Senate on November 2, 1926. The committee unanimously agreed, he reported, that the election contest brought by William B. Wilson had not been sustained.

A supplemental report stated neither Mr. Vare nor Mr. Wilson was entitled to the contested seat.

Began consideration of the report.

Senator Waterman, Colo., R., reviewed the work of the Vare-Wilson contest subcommittee, of which he is chairman.

Agreed to S. J. Res. 97, extending the time for the report of the Joint Committee on insular reorganization from December 15, 1929, to January 16, 1930.

Resumed consideration of the committee report on S. Res. 111, denying William S. Vare a seat in the Senate from Pennsylvania.

Recessed.

House:

As a committee of the Whole House on the State of the Union, considered H. J. Res. 133, the tax reduction resolution.

Representatives Hawley, Oreg., R., Collier, Miss., D., Ragon, Ark., D., Hoch, Kans., R., and others spoke on the resolution.

Passed by a vote of 282 to 17, H. J. Res. 133, for a reduction, to the extent of $160,000,000, of taxes applying to corporation and normal incomes for the calendar year 1929, on which taxes are payable in 1930.

Adjourned.

Friday, December 6, 1929

Senate:

Resumed consideration of and agreed to by a vote of 58 to 22, not voting 13, to S. Res. 111, denying William S. Vare a seat in the United States Senate from Pennsylvania.

Messrs. Bratton, N. Mex., D., Cutting, N. Mex., R., Shortridge, Calif., R., Nye, N. Dak., R., Schall, Minn., R., Pittman, Nev., D., and others spoke on the resolution.

Agreed, by a vote of 66 to 15, not voting 12, to S. Res. 177, "that William B. Wilson was not elected and is not entitled to a seat in the United States Senate from the State of Pennsylvania."

The tariff bill, H. R. 2667, was brought up and laid before the Senate as the unfinished business.

Agreed to S. Res. 131, for the printing of 800 additional copies of the hearings before the Committee on Education and Labor on the unemployment problem.

Resumed consideration of H. R. 2667, the tariff bill.

Agreed to S. Res. 178, expressing the regret of the Senate at the death of Hon. W. W. Griest, a Representative from Pennsylvania, and providing for the appointment of seven Senators to join with the Committee of the House to attend the funeral.

The Vice-President appointed Messrs. Reed, Pa., R., Phipps, Colo., R., Thomas, Okla., D., Hawes, Miss., D., Goldsborough, Md., R., Connally, Tex., D., and Townsend, Del., R.

Recessed, until Monday, December 9, 1929, as a further mark of respect for the late Representative Griest.

House:

Representative Porter, Pa., R., offered H. Res. 83, which was adopted, expressing the regret of the House at the death of Hon. W. W. Griest, a Representative from Pennsylvania and providing for the appointment of 38 members of the House to join with the Senate Committee to attend the funeral.

The Speaker of the House, Representative Longworth, Ohio, R., appointed the committee of 38 members to attend the funeral.

Adjourned as a further mark of respect to the late Rep. Griest.

Saturday, December 7, 1929

Senate:

The Senate was not in session.

House:

Received a telegram from Commander Byrd, thanking the House for congratulations forwarded in connection with the flight over the South Pole.

Received and referred to the committee on Foreign Affairs, a message from the President of the United States, regarding the state of affairs at Haiti and recommending the appointment of a commission to investigate and consider remedial measures.

Agreed to H. Res. 84, as amended, naming the majority and minority members of the Committee on the Judiciary and the Committee on the Merchant Marine and Fisheries.

Began consideration of H. R. 6564, the Interior Department Appropriation bill.

Representatives Cramton, Mich., R., Hastings, Okla., D., Simmons, Nebr., R., Lankford, Ga., D., Guevara, P. I., Frear, Wis., R., and others spoke on the bill.

Agreed to H. Res. 87, increasing from 21 to 22 the membership of the foreign Affairs Committee during the Seventy-first Congress only.

Adjourned until Monday, December 9, 1929.

Monday, December 9, 1929

Senate:

Received the credentials of and administered the oath of office to Patrick J. Sullivan, of Wyoming, to fill the unexpired term of the late Senator Warren, of Wyoming and David Baird, Jr., of New Jersey, to fill the vacancy caused by the appointment of Hon. Walter E. Edge as Ambassador to France.

Confirmed, in executive session, the appointment of Mr. Patrick J. Hurley, Assistant Secretary of War to be Secretary of War.

Messrs. Brock, Tenn., D., was appointed to fill the vacancy on the President's Plaza Commission; Overman, N. C., D., on the Bicentennial Anniversary of the Birth of George Washington; Phipps, Colo., R., on the Columbia Hospital for Women, and Townsend, Del., R., on the Yorktown Sesquicentennial Commission.

Mr. Smoot, Utah, R., Chairman of the Finance Committee, asked unanimous consent to lay aside the tariff bill and call up the tax reduction bill, H. J. Res. 133, but Mr. Black Ala., D., objected.

Received and referred to the Committee on Foreign Affairs a message from the President of the United States concerning affairs at Haiti and recommending the appointment of a commission to investigate and consider remedial measures.

Resumed consideration of H. R. 2667, the tariff bill.

Mr. Nye, N. D., R., discussed the policy of the Federal Farm Board toward the grain trade.

Recessed.

House:

Representative Goldsborough, Md., D., spoke on the subject of Branch Banking.

Received on the floor of the House the commander of the American Legion, Maj. O. L. Bodenhamer.

Representative Huddleston, Ala., D., spoke on the situation in Haiti.

Resumed consideration of H. R. 6564, the Interior Department Appropriation bill.

Adjourned.

Tuesday, December 10, 1929

Senate:

Received from the Secretary of Commerce, Robert P. Lamont, a communication presenting a list of persons and firms in Minnesota, having unpaid claims against the United States Grain Corporation, in response to S. Res. 98.

Received the annual report of the register of copyrights.

Agreed to S. J. Res. 73, for the relief of farmers in the area overflowed by the Rio Grande River in the State of New Mexico.

Received the third partial report of the special committee investigating the lobby activities.

Resumed consideration of H. R. 2667, the Tariff bill.

Messrs. Walsh, Mass., D., Smoot, Utah, R., George, Ga., D., Bingham, Conn., R., and others spoke on the bill.

Agreed to several amendments to the tariff bill.

Passed several bridge bills.

Agreed to S. Con. Res. 20, that the two Houses of Congress adjourn from December 21, 1929, to January 6, 1930, for the holiday recess.

Recessed.

House:

Representative William E. Hull, Ill., R., and Representative Stafford, Wis., R., discussed the Great Lakes Waterway.

Representative Murphy, Ohio, R., announced the death of former Representative Hollingsworth, of Ohio.

Resumed consideration of H. R. 6564, the Interior Department Appropriation bill.

Messrs. Colton, Utah, R., Green, Fla., D., Cramton, Mich., R., O'Connor, Okla., R., Hull, Wis., R., and others spoke on the bill.

Adjourned.

Wednesday, December 11, 1929

Senate:

Received report (No. 56) on S. 2276, for the purpose of continuing the powers and authority of the Federal Radio Commission.

Discussed S. J. Res. 104, relating to the valuation of the property of Common Carriers under the interstate Commerce Act.

Resumed consideration of H. R. 2667, the tariff bill.
Messrs. Norris, Nebr., R., Blaine, Wis., R., Smoot, Utah, R., Simmons, N. C., D., Walsh, Mass., D., Bingham, Conn., R., and others spoke on the bill.
Agreed to several amendments to the bill.
Executive session.
Confirmed several Post Office, Army, Naval and Marine Corps nominations.
Recessed.

House:
Representative Ramseyer, Iowa, R., spoke on the flexible tariff.
Representative Reed, Pa., R., spoke on the proposed Department of Education.
Resumed consideration of and passed H. R. 6564, the Interior Department Appropriation bill, carrying $283,189,973.
Representatives Johnson, Wash., R., Leavitt, Mont., R., Cramton, Mich., R., Stafford, Wis., R., Schafer, Wis., R., and others spoke on the bill.
Representative Reed, N. Y., R., spoke on the vocational rehabilitation of the physically disabled.
Passed several bridge bills.
Adjourned.

Thursday, December 12, 1929

Senate:
Resumed consideration of H. R. 2667, the tariff bill.
Messrs. Blaine, Wis., R., Smoot, Utah, R., Norris, Nebr., R., Hayden, Ariz., D., and others spoke on the bill.
The credentials of Mr. Grundy, newly appointed Senator from Pennsylvania to fill the seat denied Messrs. Vare and Wilson, were read and placed on file.
Discussed S. Res. 185, to deny Joseph R. Grundy a seat in the United States Senate from the State of Pennsylvania.
Messrs. Nye, N. D., R., Pittman, Nev., D., Swanson, Va., D., Wheeler, Mont., D., Robinson, Ark., D., Walsh, Mont., D., Schall, Minn., R., Blease, S. C., D., and others spoke on the resolution.
Agreed to motion that Mr. Grundy, Senator Designate from Pennsylvania, be permitted to take the oath of office and his credentials be referred to the Committee on Privileges and Elections for consideration as to his right to occupy a seat in the Senate of the United States.
Adjourned.

House:
Passed several bridge bills.
Agreed to H. Res. 92, embodying the assignment of majority members of the House of Representatives to the various Committees.
Agreed to H. Res. 93, covering the assignments of minority members of the House of Representatives to the various committees.
Agreed to S. Con. Res. 20, that the two Houses of Congress adjourn on December 21, 1929, and stand adjourned until January 6, 1930, for the Christmas Holiday recess.
Began consideration of, and passed by a vote of 240 to 100, not voting 89, H. R. 6585, to authorize the settlement of the indebtedness of the French Republic to the United States of America.
The amount of the indebtedness, to be funded by the French Republic, on the 15th of June of each year up to and including the 15th of June, 1987, to the United States of America after allowing for certain cash payments is, $4,025,000,000.00.
Representatives Hawley, Oreg., R., Crisp, Ga., D., Rainey, Ill., R., Frear, Wis., R., Lozier, Mo., D., Sloan, Nebr., R., and others spoke on the bill.
Adjourned.

Friday, December 13, 1929

Senate:
Messrs. Norris, Nebr., R., and Allen, Kans., R., presented telegrams in connection with the tariff advertisement of certain county Editors.
Began consideration of H. J. Res. 133, reducing the rates of income taxes for the year, 1929.
Messrs. Blaine, Wis., R., Norris, Nebr., R., Smoot, Utah, R., and others spoke on the resolution.
Agreed, by a vote of 60 to 13, not voting 21, to continue discussion of the tax reduction resolution, H. J. Res. 133, thereby displacing the tariff bill, H. R. 2667, as the unfinished business of the Senate.
Mr. McMaster, S. D., R., introduced an amendment to H. J. Res. 133, the income tax reduction resolution, providing a reduction in freight rates instead of a tax reduction, which was rejected by a vote of 60 to 12, not voting 24.
Recessed.

House:
Began consideration of H. R. 7491, the Agricultural Appropriation bill.
Representatives Jones, Tex., D. Fulmer, S. C., D., and others spoke on the bill.
Representative Lankford, Ga., D., spoke of plans for the erection of a suitable monument commemorating the battle at Bloody Marsh, St. Simons Island, Ga., one of the decisive battles of the world.
Pedro Guevara, P. I., Nationalist, and Santa Cruz, P. I., Nationals, Philippine Island delegates to Congress, made a plea for the immediate independence of the Philippine Islands. A speech in answer was made by Representative Beedy, Me., R.
Representative Tilson, Conn., R., majority leader of the House, announced several changes in Committee Assignments.
Adjourned.

Saturday, December 14, 1929

Senate:
Resumed consideration of and passed by a vote of 63 to 14, not voting 19, H. J. Res. 133, for the reduction of rates of income taxes for 1929.
Mr. Couzens, Mich., R., introduced an amendment to the tax reduction resolution, providing for a permanent reduction in the capitol gain and loss tax, which was rejected by a vote of 53 to 22, not voting, 21.
Messrs. Couzens, Mich., R., Smoot, Utah, R., Simmons, N. C., D., LaFollette, Wis., R., Thomas, Okla., D., Norris, Nebr., R. and others spoke on the resolution.
Rejected by a vote of 56 to 20, not voting, 20, to an amendment to the tax reduction resolution offered by Mr. Thomas Okla., D., providing for the building of public roads and buildings totaling $160,000,000 instead of tax reduction.
Several other minor amendments were rejected.
Recessed.

House:
Received and accepted without objection, the resignation of Representative Franklin W. Fort, as a member of the Committee on Agriculture.
Passed H. J. Res. 138, to provide an appropriation of $200,000 for expenses of participation by the United States in the Naval Conference to be held at London in 1930.
Passed S. J. Res. 87, extending from December 15, 1929, to April 15, 1930, the time for the report of the Joint Commission on Airports.
Passed S. J. Res. 97, extending from December 16, 1929, to January 16, 1930, the time for the report of the special committee studying reorganization of Insular Affairs.
Resumed consideration of H. R. 7491, the Agricultural Appropriation bill.
Representative Huddleston, Ala., D., spoke on American occupation of Haiti.
Adjourned.

Monday, December 16, 1929

Senate:
Passed S. J. Res. 98, granting authority for the erection of a permanent building at the headquarters of the American National Red Cross, Washington, D. C.
Passed S. 234, providing books and school supplies free of charge to the pupils of the public schools of the District of Columbia.
Passed H. J. Res. 158, appropriating $200,000 for the expenses of the participation of the United States in the naval conference to be held at London in 1930.
Passed S. J. Res. 53 creating a joint Congressional Committee relating to the reorganization and concentration of the agencies connected with prohibition enforcement and for other purposes.
Passed S. 2276, for the purpose of continuing the powers of the Federal Radio Commission and providing for an engineer staff for the Radio Commission.
Began consideration of and passed by a vote of 53 to 21, not voting 22, H. R. 6568, to authorize settlement of the indebtedness of the French Republic to the United States of America.
Messrs. Smoot, Utah, R., Howell, Nebr., R., Fess, Ohio, R., and others spoke on the bill.
Held open executive session.
Debated and confirmed several Treasury Department, Diplomatic and Foreign and Post Office nominations.
Debated the nomination of Albert L. Watson, to be U. S. District Judge, middle district of Pennsylvania.
Recessed.

House:

Passed H. R. 5637, continuing the powers and authority of the Federal Radio Commission.

Passed H. R. 3864, providing for the construction of the building of the Supreme Court of the United States.

Passed H. R. 6120, increasing authorizations for Appropriations for General Federal building.

Passed H. R. 234, increasing the appropriation providing additional hospital, domiciliary and out-patient dispensary facilities for World War veterans, from $14,000,000 to $15,950,000.

Passed several bills on the consent calendar.

Passed S. 2276, extending the life of the Federal Radio Commission and providing a chief engineer and two assistants.

Resumed consideration of H. R. 7491, the Department of Agriculture Appropriation bill.

Adjourned.

Tuesday, December 17, 1929

Senate:

Held open executive session for the purpose of considering several nominations.

Debated and consented, by a vote of 53 to 22, not voting 21, to the nomination of Albert L. Watson to be U. S. judge of the middle district of Pennsylvania.

Confirmed several other nominations.

Recessed.

House:

Representative Beedy, Me., R., spoke on the situation in Haiti.

Representative Tilson, presented to the House of Representatives from the gallery the Japanese Ambassador and the Japanese delegation to the London Naval Conference.

Resumed consideration of H. R. 7491, the Department of Agriculture Appropriation bill.

Representatives Simmons, N. C., D., Albernethy, N. C., D., Hogg, Ind., R., and others spoke on the bill.

Agreed that H. R. 5637 continuing the powers and authority of the Federal Radio Commission, being identical to S. 2276, except the Senate bill provided for a chief engineer and two assistants, be vacated and that the bill lie on the table.

Adjourned.

Wednesday, December 18, 1929

Senate:

Passed S. J. Res. 40, authorizing and requesting the President to extend invitations to foreign governments to be represented by delegates at the International Conference for the Blind to be held in the City of New York in 1931.

Resumed consideration of the nomination of Richard J. Hopkins to be United States District Judge for the district of Kansas.

Messrs. Tydings, Md., D., Brookhart, Iowa, R., Capper, Kans., R., Blaine, Wis., R., Allen, Kans., R., and others spoke on the nomination.

Passed H. R. 234, increasing from $14,000,000 to $15,950,000 the amount of the appropriation providing for additional hospital, domiciliary and out-patient dispensary facilities for persons entitled to hospitalization under the World War Veterans' act, 1924.

Passed S. J. Res. 174, making an emergency appropriation of $1,290,000 for the control, prevention of the spread and eradication of the Mediterranean fruit fly.

Passed H. J. Res. 846, authorizing the Secretary of Commerce to convey to the State of Michigan, by quit-claim deed, for park purposes all lands embraced within the Cheboygan Lighthouse Reservation, Mich.

Passed S. 1752, granting further extensions on oil and gas leases.

Confirmed several nominations.

Recessed.

House:

Passed H. J. Res. 174, making an emergency appropriation of $1,290,000 for the control, prevention of the spread and eradication of the Mediterranean fruit fly.

Passed H. J. Res. 176 providing additional appropriations for the Department of Justice for the fiscal year, 1930.

Adopted H. Res. 95, appropriating $2,500 for a bust of the late Representative Claude Kitchen, N. C., D., former minority leader of the House of Representatives.

Agreed to H. Res. 102, for the consideration of H. J. Res. 170, providing for the appointment, by the President of a Committee of not more than seven (7) members to study and review the situation in Haiti.

Agreed to H. J. Res. 170, amended requiring that the Committee on the Haitian situation transmit a copy of their report to the Congress.

Adjourned.

Thursday, December 19, 1929

Senate:

Resumed consideration of and agreed to, by a vote of 49 to 22, not voting 25, to the nomination of Richard J. Hopkins to be United States district judge, district of Kansas.

Passed H. R. 3864, appropriating $9,740,000 for the construction of a building for the Supreme Court of the United States.

Resumed consideration of H. R. 2667, the tariff bill.

Agreed that after the holiday recess, the tariff bill be brought before the Senate and that nothing be permitted to interfere with it.

Confirmed several nominations in open executive session.

Passed several bills on the calendar.

Recessed.

House:

Agreed to Senate amendment to H. R. 234, providing additional facilities for World War Veterans.

Passed S. J. Res. 5, providing for an office building for the Pan American Union.

Passed H. R. 5270, providing for the per capita payment of $25 to each enrolled member of the Chippewa Tribe of Minnesota from the funds standing to their credit in the Treasury of the United States.

Resumed consideration of H. R. 7491, the Agricultural Appropriation bill.

The Speaker announced that Representatives Johnson, Wash., R., Luce, Mass., R., and Moore, Va., D., had been appointed members of the Board of Regents of the Smithsonian Institution.

Adjourned.

Friday, December 20, 1929

Senate:

Mr. Caraway, Ark., D., presented the fourth partial report of the Judiciary subcommittee investigating lobbying activities.

Passed H. R. 5270, providing for a per capita payment of $25 to each enrolled member of the Chippewa tribe of Minnesota from the funds standing to their credit in the Treasury of the United States.

Passed S. 2740, providing for the advancement of Commander Richard E. Byrd, United States Navy, retired, to the grade of rear admiral on the retired list of the Navy.

Held open executive session and confirmed several nominations.

Recessed.

House:

Representative Cramton, Mich., R., spoke at length on what he called was a wilfully, vicious misrepresentation of his purposes, in respect to certain power permit provisions for the Flathead Indian Reservations, etc., in the Interior Department Appropriation bill, H. R. 6564.

Resumed consideration of and passed H. R. 7491, the Agricultural Appropriation bill.

Agreed to a resolution extending the sympathy of the House at the death of Representative Kaynor, Mass., R., and providing for the appointment of a committee of eighteen to attend the funeral.

Adjourned as a mark of respect to the deceased Representative.

Saturday, December 21, 1929

Senate:

Mr. Brookhart, Iowa, R., and others spoke on the natal day of cooperation bringing forth the fact that the first cooperative enterprise that ever reached permanent success was started on December 21, 1844.

Discussed certain Indian Affairs.

Mr. Wheeler, Mont., D., and others spoke on the proposed consolidation of the Great Northern and the Northern Pacific railways.

Adopted S. Res. 192, expressing the regret of the Senate at the death of Representative Kaynor, Mass., R., and providing for the appointment of a committee of six to attend the funeral.

Adjourned out of respect for the deceased Representative.

Adjourned until Monday, January 6, 1930.

House:

Passed S. 2740 providing for the advancement of Commander Richard E. Byrd, United States Navy, retired, to the grade of rear admiral on the retired list of the Navy.

Representative Schafer, Wis., R., spoke briefly on lobbying activities at the Capitol.

Adjourned until Monday, January 6, 1930.

EXECUTIVE DEPARTMENT

The White House Calendar

November 25 to December 27

Executive Orders

November 25—An executive order withdrawing approximately 116,600 acres in Mono Basin, Calif., in aid of proposed legislation authorizing the sale of these lands to the city of Los Angeles to protect and augment the city's water supply system.

November 26—An executive order exempting secretary or confidential clerk to each member of the Federal Farm Board from the requirements of examination under Civil Service Rules.

December 9—An executive order amending Civil Service Rules in regard to assistant national bank examiners and assistant receivers.

December 13—An executive order regarding expenditures in matters affecting oil lands on former naval reserves.

December 17—An executive order directing Clarence M. Young Assistant Secretary of Commerce to perform the duties of Secretary of Commerce during the absence of Secretary and Assistant Secretary of Commerce.

December 27—An executive order modifying executive order of August 2, 1916, creating Public Water Reserve No. 36, in Wyoming so as to permit the right of way for pipe line to convey gas crossing certain lands.

December 27—An executive order modifying executive order of July 1, 1913, creating Power Site No. 377, in Utah, to permit approval of application for right of way for a pipe line for conveying gas across certain lands.

Proclamations

November 22—A proclamation relative to Census Inquiries.

Messages

December 3—A message of the President of the United States communicated to the Two Houses of Congress at the beginning of the Second Session of the Seventy-first Congress.

Messages to Congress

December 4—A message from the President transmitting the budget of the United States for the fiscal year ending June 30, 1931.

December 5—A message from the President transmitting the report of the Governor General of the Philippine Islands, covering the fiscal year ended December 31, 1928, and the additional two months up to the close of the administration of Gov. Henry L. Stimson.

December 5—A message from the President transmitting the 29th report of the Governor of Porto Rico.

December 5—A message from the President transmitting the annual report of the Commission on the Erection of Memorials and Entombment of Bodies in the Arlington Memorial amphitheater.

December 5—A message from the President transmitting the Tenth Annual Report of the Perry's Victory Memorial Commission.

December 5—A message from the President transmitting the report of the United States Bureau of Efficiency.

December 5—A message from the President transmitting the concerning the occupation of Vera Cruz, Mexico, by American forces, in 1914.

December 5—A message from the President transmitting the Thirteenth Annual Report of the Council of National Defense.

December 5—A communication from the President of the United States, transmitting supplemental estimate of appropriation for the Department of State for the fiscal year 1930, amounting to $200,000, for the expenses of participation by United States in a naval conference to be held at London in January 1930.

December 5—A communication from the President of the United States transmitting supplemental estimates of appropriations for the Department of the Interior, Bureau of Indian Affairs for fiscal year 1930, amounting to $1,500,000.

December 7—A message from the President of the United States, transmitting herewith for the consideration of Congress, and without revision, supplemental estimate of appropriations pertaining to the legislative establishment for the fiscal year 1930 in the sum of $10,642.38.

December 7—A message from the President of the United States transmitting supplemental estimate of appropriation pertaining to the legislative establishment under the Architect of the Capitol, for the fiscal year 1930, in the sum of $1,277,746.

December 7—A message from the President of the United States transmitting supplemental estimate of appropriation pertaining to the legislative establishment, House of Representatives, for the fiscal year, 1930, in the sum of $5,000.

December 7—A message from the President of the United States transmitting supplemental estimate of appropriation pertaining to the legislative establishment, United States Senate, for the fiscal year, 1930, in the sum of $30,000.

December 9—A message from the President of the United States transmitting supplemental estimate of appropriation for the Department of Agriculture for the fiscal year 1930, amounting to $15,381,000.

December 13—A message from the President of the United States transmitting reports of various committees, etc.

December 13—A message from the President of the United States transmitting the annual report of the Director of Public Buildings and Public Parks of the National Capital for the year ended June 30, 1929.

December 13—A message from the President of the United States transmitting report from the Secretary of State of the claim presented by the Government of Great Britain for the death on November 1, 1921, at Consuelo, Dominican Republic, of Samuel Richardson, a British subject, and authorizing an appropriation of $1,000 in settlement of this claim.

Important Civilian Appointments

December 3—J. Duncan Adams, of South Carolina, to be United States marshal, western district of South Carolina.

December 3—Frank W. Donaldson, of Morristown, Tenn., to be collector of internal revenue, for the district of Tennessee.

December 3—Passed Asst. Surg. Milton V. Veldee to be a surgeon in the Public Health Service.

December 5—The following to be envoys of the United States: Roy T. Davis, of Missouri, to Panama; Charles B. Curtis, of New York, to the Dominican Republic; Evan E. Young, of South Dakota, to Bolivia; H. F. Arthur Schoenfeld, of the District of Columbia, to Costa Rico; Julius G. Lay, of the District of Columbia, to Honduras; Matthew E. Hanna, of Ohio, to Nicaragua; Post Wheeler, of Washington, to Paraguay, and John Glover South, of Kentucky, to Portugal.

December 9—Patrick Jay Hurley, of Oklahoma, to be Secretary of War.

December 9—William T. Turner, of Georgia, and Donald R. Heath, of Kansas, to be secretaries in the Diplomatic Service of the United States.

December 9—Heinrich A. Pickert, of Detroit, Mich., to be collector of customs for customs collection district No. 38, with headquarters at Detroit, Mich.

December 9—Walter E. Corwin, of New York, to be collector of internal revenue for the first district of New York.

December 10—William R. Castle, Jr., of the District of Columbia, to be Ambassador of the United States to Japan.

December 10—Edwin P. Morrow, of Kentucky, to be a member of the Board of Mediation for a term expiring five years after January 1, 1930.

December 13—Ralph J. Totten, of Tennessee, to act as minister resident of the United States to the Union of South Africa.

December 13—Leon Dominian, of New York, to be a consul general of the United States.

December 13—George J. Hatfield, of California, to be U. S. attorney, northern district of California.

December 13—Paul W. Kear, of Virginia, to be U. S. attorney, eastern district of Virginia.

December 13—The following to be United States marshals: Stillman E. Woodman, of Maine, district of Maine; William J. Keville, of Massachusetts, district of Massachusetts; William C. Hecht, of New York, southern district of New York, and Clarence G. Smithers, of Virginia, eastern district of Virginia.

December 13—Jose Padin, to be commissioner of education for Porto Rico.

December 14—Henry M. Boss, Jr., of Rhode Island, to be U. S. attorney, district of Rhode Island.

December 14—Roy St. Lewis, of Oklahoma, to be U. S. attorney, western district of Oklahoma.

December 16—The following persons to be secretaries in the Diplomatic service of the United States: Richard W. Morin, of Minnesota; Hedley V. Cooke, Jr., of New Jersey; Gerald A. Mokma, of Iowa; Edward Anderson, Jr., of Florida; Robert A. Acly, of Massachusetts; James H. Wright, of Missouri; Sebe A. Christian, of Oklahoma; Charles A. Converse, of Georgia; Williard Balbriath, of California, and Kenneth S. Stout, of Oregon.

December 17—Joseph B. Eastman, of Massachusetts, to be an interstate commerce commissioner.

December 17—Robert M. Jones, of Tennessee, to be an interstate commerce commissioner.

December 17—Harry E. Hull, of Iowa, to be Commissioner General of Immigration, Department of Labor.

December 17—Ethelbert Stewart, of Illinois, to be Commissioner of Labor Statistics, Department of Labor.

December 17—Annabel Matthews, of Georgia, to be a member of the United States Board of Tax Appeals.

December 18—John L. Day, of Oregon, to be United States Marshal, district of Oregon.

December 21—Ira K. Wells, of Kansas, to be United States district judge, district of Porto Rico.

December 21—Mary O'Toole, of the District of Columbia, to be a judge of the Municipal Court, of the District of Columbia.

December 21—The following persons to be United States Attorneys: Albert D. Walton, of Wyoming, district of Wyoming; Walter Harrison Fisher, of North Carolina, eastern district of North Carolina; Hoyt E. Ray, of Idaho, District of Idaho, and Sawyer A. Smith, of Kentucky, eastern District of Kentucky.

December 21—The following persons to be United States Marshals: Hugh L. Patton, of Wyoming, district of Wyoming; Brownlow Jackson, of North Carolina, western district of North Carolina; Don A. Preussner, of Iowa, northern district of Iowa; Frank M. Breshears, of Idaho, district of Idaho, and Alfred J. Chretien, of New Hampshire, district of New Hampshire.

December 21—Fayette J. Flexer, of Illinois, to be a secretary in the Diplomatic Service of the United States.

December 21—Lester Maynard, of California, to be a consul general of the United States.

JUDICIAL DEPARTMENT

The Month in the Supreme Court

The Case—No. 54. Interstate Commerce Commission v. United States ex rel. City of Los Angeles, on writ of certiorari to the Court of Appeals of the District of Columbia.

The Decision—The Supreme Court of the United States decided that a writ of mandamus would not lie against the Interstate Commerce Commission to compel the Commission to exercise jurisdiction to require interstate railroads to construct a union passenger station in Los Angeles, Calif.

The Opinion—Mr. Chief Justice Taft delivered the opinion of the Court of November 25, which, in part, follows:

By petition filed July 12, 1928, respondent sought from the Supreme Court of the District of Columbia a writ of mandamus compelling petitioner, the Interstate Commerce Commission, to consider the evidence introduced in the proceeding before it known as Los Angeles Passenger Terminal cases, 100 I. C. C. 421; 142 I. C. C. 489, for the purpose of determining whether the Commission shall order the Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, and the Los Angeles & Salt Lake Railroad Company to build and use an interstate union passenger station in the City of Los Angeles, Calif.; and after consideration of the evidence, to make such order therein as the facts may require. The Supreme Court of the District dismissed the petition. The court of appeals reversed its judgment and remanded the cause for further proceedings.—F. (2)—. This court granted a writ of certiorari.

The railroad commission of that State had in 1921 (19 Opinion of the R. R. Com. of Cal., pp. 740, 937) ordered the carriers to file plans, etc., and to acquire sufficient land within what is known as the Plaza area in that city for a union passenger station and terminal, to submit plans therefor, and, upon their approval of them by that commission, to proceed with the construction of the station.

The carriers carried these orders by writs of certiorari to the supreme court of the State, and that court, in Atchison, Topeka & Santa Fe Railway Co. v. Railroad Commission of California, 190 Cal. 214, held that by the transportation act of 1920 Congress had taken exclusive authority over the matter of a union interstate terminal depot, and the court therefore denied the State railroad commission the jurisdiction which it had sought to exercise. The State railroad commission petitioned this court for writs of certiorari and at the same time instituted proceedings before the Interstate Commerce Commission which resulted in the orders above referred to.

This court granted a writ of certiorari and on April 7, 1924, rendered its decision in Railroad Commission of California v. Southern Pacific Co. et al, 264 U. S. 331, wherein, in affirming the judgment of the State court, we held that the relocation of tracks, which were incidental to the proposed union passenger station, required a certificate of approval by the Interstate Commerce Commission under paragraphs 18 to 21 of section 1, Interstate Commerce Act as amended by section 402, transportation act of 1920 (41 Stat. 476, 478), as a condition precedent to the validity of any action by the carriers or of any order by the State Railroad Commission, and that until the Interstate Commerce Commission had acted under those paragraphs, the carriers could not be required to provide a new union station or to extend their main tracks thereto as ordered by the State Railroad Commission.

Pending the hearing of the causes in 264 U. S. 331, the direct proceeding, referred to above, was instituted before the Interstate Commerce Commission by the City of Los Angeles, asking for an order by the Commission requiring the three railroads to build a new union station at the Plaza site. With it were consolidated an application by the Southern Pacific Company for authority to abandon certain main line tracks and the operation of passenger and freight train service on Alameda Street, and an application by the Southern Pacific and the Salt Lake for authority to construct new, and to extend existing, lines.

The Commission held, 100 I. C. C. 421, that it was without authority to require the construction of the new union station. It said in the report, at page 430:

As to the application by the Southern Pacific and Salt Lake to extend their lines to permit the joint use of the Southern Pacific's existing station, the Commission's findings were unfavorable and its order denied the application. The Commission's then report was not accompanied by certificates carrying out its findings, and it reserved jurisdiction to alter its findings in the event that the plan of the State commission, as finally evolved, should be materially different from that "as here considered to be in the public interest."

After a further hearing in the direct proceeding instituted by Los Angeles for an order directing the erection of a union station the prayer of Los Angeles was denied.

(142 I. C. C. 489). Thereafter the city filed the petition above referred to in the Supreme Court of the District of Columbia for a writ of mandamus. This was in the present proceeding.

Attached to the petition as exhibits were the pertinent parts of the record in the previous cases. There were filed an answer of the Commission, and a demurrer to the answer. The Commission still adhered to its original report. The Supreme Court of the District entered a judgment overruling the demurrer and, the city electing to stand upon the petition, dismissed the petition. On an appeal, the judgment was reversed by the Court of Appeals of the District, which held, in substance, that the Commission was vested with supervisory control over the three carriers and that they were subject to an order requiring the construction of the union station and the necessary connecting tracks prayed for.

The sole question for decision is whether the Interstate Commerce Commission has jurisdiction to order the construction of the union station.

In its final report the Interstate Commerce Commission held that it had no power to require the construction and operation of a union station upon the site specified.

In weighing the effect of the transportation act, it should be noted that in this important measure affecting associations between interstate carriers of a compulsory character, there is nowhere express authority for the establishment of union passenger station compulsory or otherwise. Emphasis is put on physical connection between the tracks of one carrier and others if permitted by the Interstate Commerce Commission and if properly paid for, either by agreement or condemnation, by the carrier enjoying the use of the track of the other companies. But it is limited in extent to connections with the terminals of other companies within a reasonable length.

Without more specific and express legislative direction than is found in the act, we cannot reasonably ascribe to Congress a purpose to compel the interstate carriers here to build a union passenger station in a city of the size and extent and the great business requirements of Los Angeles. The Commission was created by Congress. If it was to be clothed with the power to require railroads to abandon their existing stations and terminal tracks in a city and to combine for the purpose of establishing in lieu thereof a new union station, at a new site, that power we should expect to find in congressional legislation. Such authority, if conferred in Los Angeles, would have application to all interstate railroad junctions, including the numerous large cities of the country, with their residential, commercial, shopping, and municipal centers now fixed and established with relation to existing terminals. It would become a statute of the widest effect and would enter into the welfare of every part of the country. Various interests would be vitally affected by the substitution of a union station for the present terminals. A selection of its site from the standpoint of a city might greatly affect property values and likewise local transportation systems. The exercise of such power would compel the carriers to abandon existing terminals, to acquire new land and rights of way and enter upon new construction, to abandon large tracts and to sell territory of the same extent as no longer necessary for the use of the carriers.

There would have to be tribunals to apportion the expenditures and cost as between the carriers. A proper statute would seem to require detailed directions, and we should expect the intention to be manifested in plain terms and not to have been left to be implied from varied regulatory provisions of uncertain scope. It would be a monumental work and one requiring the most extensive exercise of expert engineering and railroad construction. It would make possible great changes of much importance in the plans of every city and in the rearrangement and mutations of railroad property and public and private business structures everywhere. We find no statutory preparation for the organization of such machinery.

We cannot agree with the Court of Appeals of the District in its disposition to view section 3, paragraph 3, as vesting the Interstate Commerce Commission "with almost unlimited power in the matter of establishing terminals and union stations for the proper interchange of traffic between the converging interstate railroad lines." The words "reasonable, proper and equal facilities" are, of course, comprehensive enough to include not only trackage, but terminal facilities described as extending a reasonable distance outside of the terminal, but hardly to give the Commission "unlimited power" in the building of union stations.

To attribute to Congress an intention to authorize the compulsory establishment of union passenger stations the country over, without special mention of them as such, would be most extraordinary. The general ousting from their usual terminal facilities of the great interstate carriers would work a change of title and of ownership in property of a kind that would be most disturbing to the business interests of every State in the country.

To recognize what is here sought as within the power of the Commission to order to be done in each of all the great cities throughout the United States and to sustain it as legal, without provision for effective restraint by the carriers, or other interests, would expose the community to possible abuse, with nothing but self-imposed restraint on bureaucratic extravagance.

When the interest of a great city in its improvements is to be promoted entirely at the expense of railroads that enter it, Congress would be expected to hesitate before it would change discretionary leave for the erection of such stations into positive command. In such a case the expenditure of a large amount of capital will not bring with it corresponding increase in the railroad revenues. If Congress had intended to give an executive tribunal unfettered capacity for requisitioning investment of capital of the carriers and the purchase of large quantities of land and material in an adverse proceeding, we may well be confident that Congress would have made its meaning far clearer and more direct than in the present meager provisions of the transportation act. The suggestion of complainants is that out of provisions for local union of main tracks and switching tracks we should use our imaginations and develop them into provisions for giant union passenger stations. It is true that the railway systems may be united through switches and connecting tracks in physical connection, but this has not been held to justify great monumental structures, extended in their complicated machinery and superficial extent and expense. There is a difference of real substance between such connecting tracks and switches and junctions and a passenger metropolitan union station. The latter calls into being a new entity naturally requiring new legislative authority. This court, referring to a kindred matter, said of this case:

"But there is great difference between the relocation of tracks of a local union station and what is proposed here. The findings are more than that of mere degree.

They and their consequences are so marked as to constitute a change in kind." 264 U. S. 331, 346.

But it is said that we have already foreclosed the conclusion in this case by opinion in 264 U. S. 331. The only issue there presented to this court was whether it was necessary to secure from the Interstate Commerce Commission its approval of the construction of a union station and the relocation of the connecting tracks proposed. The point in that case was the necessity for the acquiescence by the Interstate Commerce Commission in respect to a union passenger station. We held such a certificate to be necessary before a union station or connecting lines of interstate carriers could be lawful. That is all we held.

It is quite true that we made references in the opinion to a case foreshadowed in the hypothetical certificates of the Commission in the building of a union station. Such references, had, however, not the slightest significance in respect to who could or should build the station, or whence its cost should be defrayed. It was as far as possible from the purpose of the court in its opinion to indicate its views of the powers which the Commission could exercise adversely to the carriers in compulsory proceedings. They were not before the court for adjudication.

In what situations, if any, action of the Interstate Commerce Commission may be controlled or corrected by mandamus need not now be considered, because it is apparent that there is here no meritorious basis for exerting such power, even if found to exist.

The judgment of the Court of Appeals of the District of Columbia is reversed.

Definitions of Freedom of the Seas

(*Continued from page 20*)

Admiral Ratye

And what does the theory of freedom of the seas, as we conceive it, essentially consist?

"Firstly, to admit that there are, on the one hand, coastal waters, and on the other hand, open waters. The coastal or territorial waters, which ought to extend no longer to the limit of the range of the old guns, but to that of the range of the most powerful modern cannon, that is, at present, to at least forty kilometers. The open seas are all those outside the range of such cannon, and from which, in consequence, the coast cannot be bombarded.

"Secondly, to decide that the open seas, which we call oceanic, should be neutralized. That, in consequence, it is permitted to fight and to use the right of search and capture only in the coastal waters of belligerents."—*Admiral Ratye, of the French Navy. Speech on March 8, 1928.*

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(*Continued from page 21*)

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